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it's our business

newspad of the Employee Share Ownership Centre

Exclusive:
HMRC extends one year SAYE payments holiday to the poor and sick from September

HMRC has told *newspad* that it will extend the new planned maximum one year SAYE payments holiday **without loss of tax benefits** to all participants, in order to give the same extended payments relief to those who suffer from long-term illness, or who are experiencing severe financial problems.

However, the doubling of the SAYE contributions holiday, from six months to one year, as promised in last autumn's Budget, will be delayed until September 1 to give sufficient time to SAYE- Sharesave providers to get their IT systems up to speed in order to cope with the change.

It was not generally known that the government had decided to extend the range of SAYE scheme participants who could qualify for the contribution holiday solely from those on maternity or paternity leave to include - from September - those other employee participants who are suffering severe illness or who are in serious financial difficulty.

HMRC said in a statement that it was delaying the change in order to give SAYE- Sharesave providers sufficient time in which to update their IT systems. Originally, it had been planned to double the maximum SAYE payments holiday - to one year - from April, at the beginning of the new financial year.

A government spokesman said: "We want to help employees to save towards acquiring employer shares, by giving them more flexibility so that having a child, falling sick or experiencing financial hardship does not prevent them from saving. However, we need to make sure that we give providers the time they need to put reliable and secure systems in place to let this happen."

An estimated 500,000 UK employees are granted SAYE options every year. They save towards buying employer shares via monthly contributions, and receive income tax and national insurance relief on the value of share options when exercised.

'This allows employees to share in the success of the companies they work for and incentivises a savings habit,' said HMRC.

'However, we understand that there might be times when a person genuinely cannot afford to make a contribution. For example, if they are earning less because they are off sick or are on parental leave.

During the Autumn Budget, we announced that we would double the amount of time that people on maternity or paternity leave can pause contributions without losing their tax advantage from six to 12 months.

'We are delaying the change to September 1 to give providers the time they need to update their systems.

'Once the systems are ready, we will double the time not just for those on maternity or paternity leave but to all employees, so that others, such as those on long-term illness or experiencing financial hardship, can still benefit.'

YBS Share Plans was among the SAYE plan administrators who received a note earlier from HMRC, advising them that it was suspending 'until further notice' its planned circulation of draft guidance on allowing participants on maternity or shared parental leave to extend their Sharesave payments holiday. However, at the time no further detail was given.

From the chairman

I welcome with particular pleasure this month into membership of the Centre KKR - the worldleading private equity investor. It has come a long way since it was famed as the Barbarian at the gate in a famous book and movie. Now, with a personal lead from Pete Stavros, it has awarded all employees in Gardner Denver 40 percent of salary in restricted stock units. At a time when British top management, its sensitivity and rewards are under question as never before, Pete Stavros has led from the front and offered substantial reward to all. He has chosen a method which suits the need and by-passed the straight jacket of share schemes. Such innovation is needed not only to bring equity to private equity employees but to reinvent the role of the ceo in sharing the wages of capital. Other than at John Lewis (which should not strictly be comparable) when do you last recall a British ceo or chairman prominent in sharing reward with all employees?

Malcolm Hurlston CBE

Roadchef compensation battle intensifies

Centre chairman **Malcolm Hurlston** and **MP Neil Gray** are ratcheting up the pressure on **HMRC** to return a £10m tax payment to the ex **Roadchef** Esop participants, who are still awaiting compensation payments almost 20 years after the company was sold, using their employee shares, without their knowledge.

Both men want Tory ex-Cabinet minister **Nicky Morgan**, chair of the powerful parliamentary **Treasury select committee**, to launch an enquiry into why the former Roadchef Esop participants are being left to die off without ever seeing a penny of their High Court-awarded compensation.

In addition, they want to set up a meeting with the **Treasury financial secretary, Mel Stride MP,** over what could be done to stop HMRC holding the ex-Roadchef Esop participants – and 3,500 other employees – in an arm lock over how much tax, if any, the employee beneficiaries should pay, once they receive their shares of the multi-million compensation pot.

Newspad reported last month that the Treasury minister had ducked Mr Gray's accusation in a Commons adjournment debate that HMRC was using arm-twisting tactics in negotiations with the Roadchef EBT trustee over whether the compensation will be paid free of tax, or not. The SNP MP had accused HMRC of telling the Roadchef EBT trustee that employee beneficiaries would **not** have to pay any tax on any compensation payout, ***provided*** the trust did not pursue it for return of the £10m CGT tax bill paid by former Roadchef md and ceo, Tim Ingram-Hill, on his sale of Roadchef shares, some of which the High Court later ruled he did not own.

Mr Hurlston discussed the Roadchef Esop compensation battle with Mr Gray when they met recently at the House of Commons. They noted that the minister had not given clear answers during the debate, at least partly because HMRC officials do not work directly with Treasury ministers. It even classifies itself as a '*non-ministerial government department,'* though the financial secretary, Mr Stride, is officially responsible for it. This complicates the accountability of HMRC, critics claim.

Furthermore, HMRC is refusing to answer questions from *newspad* about its role in the lengthy delay in authorising the compensation payments by hiding behind its catch-all 'privacy' mantra. Though it rightly says that it cannot comment on the tax affairs of individuals, the Centre argues that this case, which reached the High Court, is really a *Class Action* and therefore of public interest, which should have trumped the privacy argument. *In isolation,* there are no individual tax considerations at all. After out-of-court negotiations, it was decided that the compensation pot should be divided three ways: *the 350 or so original Roadchef Esop participants are to get 61 percent; *the 250 or so original **non-**participants, mostly part-timers, will get nine percent and *the remaining 30 percent to be divided among more than 3,250 Roadchef employees, who began working for the motorway services chain between 1998 (*when Roadchef was sold to Nikko)* and the court ruling in January 2014.

In other words the eventual tax treatment of these people will be **identical,** except when they have important offsetting income from other sources – unlikely in most cases.

When the trustee of the Roadchef employee benefit trust (EBT1) applied to HMRC for clearance to pay out the long-awaited compensation, *on the basis that the payments would be tax-free,* it was astonished to learn that while HMRC would be happy to waive any individual tax implications on the payments, as long as the trust did not pursue it for the £10m paid in tax by Mr Ingram Hill when he had sold his own Roadchef shares and those rightly belonging to the Roadchef EBT. This was the first the trustee had heard about Mr Ingram Hill's tax payment.

MPs were told in the Commons debate that the High Court had ruled that the purchase of the shares in the sale of the company was therefore void and *the £10m paid to HMRC belonged to the beneficiaries, not Mr Ingram Hill***.**

Subsequently, Mr Ingram Hill settled an undisclosed compensation sum with the trust, which then notified HMRC that the settlement had occurred and that it intended to pay out to its beneficiaries, who total c.*4,000* current and former Roadchef employees.

Chairman of the **Roadchef EBT1 Trustee** is Christopher Winston Smith, of the law firm Reed Smith**.** He wrote before Christmas to the Esop beneficiaries to inform them that he would not accept HMRC's bargaining strategy – as the £10m tax payment belonged to them.

If Ms Morgan, herself a former Treasury minister, as well as education secretary within the Cabinet until 2016, agrees that the Roadchef Esop beneficiaries' case is worth taking up, then HMRC officials could be summoned before her Commons committee for a grilling over their treatment of these low-paid employees.

The Centre chairman told Mr Gray: "As founding chairman of the Esop Centre, I was delighted that you were able to raise in the House the question of HMRC's inexplicable behaviour. You will be aware that *newspad* is the only publication to follow this sorry saga right through. In the course of the debate you suggested that the Treasury select committee might take an interest and I am pleased to hear that you have taken that idea forward.

"I have been familiar with the Roadchef story right from the beginning since I devised Unity Trust and, with the bank, brought employee ownership to Britain. This is a stain on the good name of employee ownership."

The SNP is making an issue out of the Roadchef case: so far seven of its MPs have signed the Early Day Motion (as amended) calling for speedy resolution of the tax battle over the Roadchef EBT compensation pot. Fifteen MPs from all parties across the Commons, comprising three from Labour, three Tories, including Sir Graham Brady, chairman of the Tory 1922 backbench committee, one Welsh Nationalist and one from the DUP, in addition to the SNP seven.

During the Commons debate, the minister told MPs: *"Before the sale of Roadchef in 1998, the company's then chairman arranged for shares held by the EBT to be transferred to him. He subsequently sold the shares for a profit. Both the acquisition and sale were taxed appropriately at that time. The former chairman's actions were contested, and in 2014 the High Court ruled that effectively the money from the sale of shares had to be paid back, net of tax, to the trust for distribution to its beneficiaries. The judgment stated that the proceeds from the shares sold had been held in constructive trust by the chairman for the beneficiaries. However, the implementation of the High Court's ruling in 2014 and the subsequent distribution of the original shareholders has proved to be very complex."*

Setting top pay 'like the Seven Deadly Sins'

Media hype over alleged 'excessive' executive reward packages should not distract attention from the key role top pay plays in the wealth creation process, said leading remuneration consultant and Centre member **Damian Carnell**.

"Done well, top pay adds huge value. To correctly connect top talent and core capital is a powerful business combination that is at the very heart of capitalism," he wrote in the latest issue of the *Journal* of the **Institute of Economic Affairs.**

Damian wrote at the invitation of the journal's editor Prof Len Shackleton with whom he shared the Centre's platform at last November's symposium. The papers are now gaining increasing resonance.

Damian, a director of executive compensation and employee share plans specialist **Willis Towers Watson,** compared the setting of top executive reward packages to the *Seven Deadly Sins,* because the pitfalls were eternal: "Like the real Seven Deadly Sins, the potential flaws in processes are both serious and enduring – ongoing diligence as to process and sense checks of potential outcome will always be needed."

Nevertheless, "The media hype at the occasional flaws should not distract from the vital role top pay plays in the wealth creation process."

Anger over high executive reward seemed mainly reserved for high corporate earners, wrote Damian, emphasising the point made in his presentation at the Centre's British Isles symposium hosted by **White & Case.**

"Society seems largely comfortable with inherited wealth, even at extreme levels. Anything to do with entertainment is not just accepted, but celebrated – from Madonna to Maradona, from Ronaldo to J. K. Rowling - all are applauded for the visible contribution to the richness of our personal lives their skills can bring. Indeed entrepreneurs too, such as Richard Branson and James Dyson, are accepted as being rewarded fairly for their skill and business daring." So why was it that top business executives came in for most of the stick over high earnings, he asked?

First, there was a blurred understanding as to whether the top pay system was broken: many people assumed that ceos set their own pay; there were examples which attracted anger where there may have been a bug in the system. Often these related to getting performance-based pay wrong - the notorious 'payment-for-failure' which seemed so obviously wrong. The pay market was certainly not one of perfect competition. The concept of an open market-clearing price was hazy. There were barriers to entry, high transaction costs, imperfect information, relatively few transactions and a product that was far from fungible. Perhaps the key concern with 'excessive' pay was linked to the fact that no one really knew what a ceo spent his or her days doing. The staggering sums seemed unfair and disconnected with a normal understanding of the value delivered in a working day, so there had been interventions from shareholders and governments to try to prevent perceived error or abuse. However, there had been few attempts to actually freeze or reduce quantum, he said.

To tackle these problems, it was expected that the **UK Corporate Governance Code** (as overseen by the **Financial Reporting Council**) would require 'comply or explain' to apply to the following for accounting periods from January 1 2019 (subject to consultation): • Minimum vesting and post-vesting holding periods for share awards of five years. • Remuneration committee chairs must have 12 months' previous experience. • Boards must consider ethnic and social diversity when choosing new board members. • Independent chair appointments to exclude those who had been board members for nine years or more. • Companies must 'promote the long-term sustainable success of the company, generate value for shareholders and contribute to wider society'. • Companies must say what they will do if they have significant shareholder opposition to proposed executive pay. • Companies must say how remuneration committees engage with employees generally and their pay and incentives, and say how this connects with executive pay.

Damian concluded: "Setting top pay and getting the rationale and design right is difficult – in part it is objective but in part subjective and it forces healthy debates about the future direction and prospects of the business in a way that affects many stakeholders.

"It will remain controversial. The passions and opinions surrounding top pay are probably incapable of being finally resolved. Top pay will continue to attract scrutiny and criticism even when well-designed and justified. Regulation will be ongoing. Shareholders, code-setters and lawmakers worldwide will have an on-going job to help improve both process and outcomes."

EVENTS

Centre High Table: March 14

Robots, AI and employment law will be the topic of the next High Table dinner on **Wednesday March 14** when the guest will be **Dr Ewan McGaughey**. Ewan's core research interests are economic and social rights, particularly in the governance of enterprises. The event will start with a welcome glass at 6:30 pm followed by dinner in the Mezzanine Suite of the **RAF Club**, 128 Piccadilly London W1J 7PY. Tickets are £140 + VAT each. If you would like to join us, contact Juliet Wigzell as soon as possible, as we are limited to 11 places at the table.

Share schemes for trustees: Jersey, May 2

The Centre's next joint employee share schemes conference for trustees will be held at the Pomme d'Or Hotel in Jersey on Wednesday, May 2. This event is held in association with the Jersey branch of **STEP,** the **Society for Trust & Estate Practitioners,** offering an industry leading networking and learning opportunity for all those interested in share schemes and EBT trusteeship. The programme will cover the latest taxation, legal and regulatory issues in Jersey and the UK. Speakers include:

Colin Powell CBE, **States of Jersey:** *Panel session on Jersey, the UK and the EU*

Paul Malin, Haines Watts: *The new challenges for all - the April 2019 loan charge, the Digital Disclosure Service and more*

David Pett, Temple Tax Chambers: *Recent UK cases in the courts/tribunal*

Graham Muir, CMS: *GDPR*

Stephen Woodhouse, Pett Franklin: *Employee trusts: challenges and opportunities for trustees*

David Craddock, David Craddock Consultancy Services: *Share price volatility, underwater options and coping with a downturn in share price*

Attendance costs £375 for Centre/STEP members and £480 for non-members.

Book and pay by the end of Friday March 2 to take advantage of an early bird discount:

50 percent off a third delegate from the same organisation, or 10 percent off the total. To book your place, email: events@esopcentre.com.

Paris *newspad summit* June 21–22

Confirmed speakers at the next international employee equity *newspad* summit in **Paris** on **Thursday & Friday, June 21-22,** include: **David Craddock Consultancy Services; Esop Centre**; **FONDACT**, **Linklaters, Pett Franklin, RM2, St Gobain; Solium; White & Case** and **Willis Towers Watson.** Senator Henri Leroy has been invited.

Senior legal member **Linklaters** is hosting the summit at its offices at **25 rue de Marignan**, just off the Champs Elysées.

The programme will contain a dozen slots and open debates, spread over the two days. Generic subject areas will include:

Share plan regulation – MIFiD2 and GDPR - How are they bedding in?

Corporate case histories about latest developments in employee equity plans

Executive equity remuneration: Has the tide turned? Are LTIPs doomed?

Re-casting all-employee share plans post a merger/ takeover

Share plan administration techniques;

Employee communications in share plans - overcoming cultural differences

Business succession in European privately owned companies

Restricted Stock Units - Are they best used in international equity plans?

Increasing take-up among the more unequal

The likely impact of **Brexit** on international employee equity plans

Benchmarking international share plans - getting value for money

Latest developments in **French** international employee equity plans

newspad invites Centre members to email proposals for topic presentations to fill the few remaining speaker slots. **Speakers may suggest their own topics.** Applicants have the choice between a solo 30 minute slot, covering an important technical issue affecting international employee share schemes, or a 45 minute employee equity case history, in which a client joins the main speaker(s) at the podium. Don't delay if you plan to speak in Paris, as speaker slots

are filling up rapidly. To review the programme outline see the summit event page at www.esopcentre.com.
Speakers will pay **£245*** each for their slots, but there will be *no extra charge* if they bring a plan issuer representative (share plan manager) as a joint speaker.
Delegate fees*:
Centre member practitioners: £395
Non-member practitioners: £615
Plan issuer representatives: Free, subject to a **£10** admin fee.
**There is no VAT as this event takes place outside the UK.*
The informal delegates' pre-conference dinner – to which all are invited - will be held at central Paris restaurant ***Fermette Marbeuf*** on **Wednesday** evening (June 20) at c. 2040.
Centre chairman **Malcolm Hurlston** will open the summit on Thursday at **1045 am** (*to allow travel time from Gare du Nord for delegates arriving in Paris on Thursday morning).* Linklaters offers a buffet lunch, with the afternoon session finishing at 1740, and a drinks reception to follow. Afterwards, informal dining groups will head off for restaurants of their choice. The Friday morning session will start at 0930, terminating at 1300. Leading Linklaters' team will be **Rasmus Berglund** from the London office and **Lionel Vuidard** and **Géric Clomes,** from its Paris based employment and incentives division. If you wish to speak at this event, please contact newspad editor Fred Hackworth: fhackworth@esopcentre.com to claim a slot. We would expect around 55 people to attend.

MOVERS AND SHAKERS

Former steering committee member **Kevin Lim** has left Centre member **Solium,** where he was UK relationship director for more than four years**.** He can be contacted at kevin@lim-family.net and on 07421 273 321
Meanwhile, **Paul Stoddart'**s gardening leave, after leaving **Equatex UK,** where he was business director, ends next month (April), but it is understood that **Mitan Patel**, **Finn Dahl** and **Veronique Japp** - all part of the Equatex team - can continue to hone their gardening skills for a few months yet.
Centre member **Global Shares**, a leading provider of equity compensation management solutions, share plan administration software, share-dealing and financial reporting, has appointed **Steve Kavanagh** as head of global compliance. Steve brings 17 years' experience to this new role. **Tim Houstoun**, ceo Global Shares, said: "Steve's expertise in helping multinational clients to navigate complex international compliance issues, together with his extensive knowledge of global share plans, makes him an invaluable addition." Prior to joining Global Shares, Steve spent eight years with **Linklaters** and seven years as director, head of advisory services, at **GlobalSharePlan**s and **Solium Global Compliance**. Contact: **Global Shares** 1 Bengal Court, Birchin Lane, London, EC3V 9DD. Tel: +44 (0) 20 8335 4259 Ext 415 M: +44 7900 407875. News of another Global Shares appointment just in - **Mark Vanderpump -** formerly of head of corporate dealing at **Equiniti -** has resurfaced in the share schemes world as director of Global Shares' EMEA (Europe, Middle-East & Africa) division.
Benjamin Morris has replaced **Angela Perry** in the chair of the **Australian Employee Ownership Association.**

UK CORNER

How to exit the business
Catherine Gannon (managing partner, **Gannons**) and **Helen Curtis** (partner, Gannons) shared their expertise on shareholder exits in a London seminar. They tackled tax-efficient ways of selling a minority shareholding before an exit. **Catherine** guided the audience through the steps of trade sale and share buy back exits. On the former, she warned delegates to be wary of the numerous promoted business valuation methods, as valuation (a crucial trade sale step) is an "art not a science". She advised that deducing the buyer's interest was vital and re-organising the business to reflect those interests pre-sale was a prudent move. Ms Gannon discussed the requirements for securing Entrepreneurs' Relief upon an exit. She emphasised that the "right to dividend" was central to qualification for such relief (loans do not qualify). She stressed that timing was the most important consideration for successful shareholder exit. Alluding to the troubles facing Jamie Oliver's restaurant business, she said that business owners should seek to sell before the crest of the wave. **Helen** dissected share to share exchanges with loan notes and capital reduction demergers. Such mechanisms may be attractive to irreconcilable shareholders or retiring owners/managers, she said. Share buy backs must be profit-funded and not entail loans - not so with a share for share exchange. Here, shares can be traded between the original company and a holding company to similar effect. In this scenario, shareholders could be the same in the old and new companies or new shareholders could be

introduced. Alternatively, she said, businesses may wish to undertake a capital reduction demerger. Here she advised equalising dividends when selling off a low-value area of a business, enshrining different shareholder rights for any new subsidiary following the demerger and considering the application of Stamp Duty Land Tax on any property transferred in the demerger.

Admiral staff benefit from profit surge

Car insurer **Admiral** is giving more than 9,600 staff shares worth £3,600 each after the business bagged a 43 percent profits surge last year. A government change to an injury compensation rule, the *Ogden* rate, had reduced Cardiff based Admiral's profits in 2016. "Last year was only the second year we'd ever reported a year-on-year fall in profits. So it's great to be back in the groove, with a 23rd year of record profits," said ceo David Stevens.

Centre member enters Sharesave market

Global Shares appointed **Metro Bank** as its savings carrier, as it entered the UK SAYE-Sharesave market for the first time. Global Shares md, John Meehan, said: "*We are delighted to enter the UK Sharesave market, which is seeing a resurgence of interest thanks to legislative improvements and more tax efficient benefits. Metro Bank, like Global Shares, is a true disruptor and together we offer cutting-edge technology with an exceptional online experience, service excellence and an invigorated approach to saving. These ingredients make this partnership a great choice for companies and encourages their employees to take a direct stake in their organisation.*"

Sharesave is a popular 'win, win' tax-favoured share scheme, which is operated by about 450 UK based companies, large and small. It enables employees to save between £5 and £500 per month from their post tax pay, over a period of three or five years, in order to hold options over company shares. When the savings contract ends, employees can use their options to buy shares at a discounted price fixed at the start of the savings contract, or, if their options are underwater, have their cash investment returned. Their gains are exempt from Income Tax and NI.

CORPORATE GOVERNANCE

Trustees 'not strong enough' - claim

Trustees are sometimes not strong enough to face down a determined executive on their own, said **Peter Montagnon** associate director, **Institute of Business Ethics** and former head of executive reward oversight at the **Association of British Insurers (ABI).** In the wake of the **Carillion** collapse, he told the *FT,* where he formerly worked, that companies should be barred from making dividend payments and executive bonuses where there was a significant pensions deficit and no long-term agreement with the **Pensions Regulator** on how it should be filled. Mr Montagnon added: "At least the developments at Carillion appear to be pointing towards some useful lessons for the future. The Institute of Business Ethics suggested the bar in its response to the government green paper on corporate governance.

"*We said that the regulator should have similar powers to impose conditions on takeovers where a large deficit is involved too. Trustees are sometimes simply not strong enough to face down a determined executive on their own. The regulator might be reluctant to take on these responsibilities, but if a change in the rules made for a more conscientious and timely approach to addressing deficits, its work would become easier in the end.*"

Bankrupt occupational pension schemes are being deposited with the taxpayer financed Pension Protection Fund (PPF), so that employees get up to 90 percent of their full company pension – up to the £34K p.a. limit - when they retire. But the PPF's liabilities across all defined benefit schemes it covers now exceed its assets, by ***£103bn***. This is surely unstable, wrote Simon Jenkins in *The Guardian*.

*Ex Carillion directors turned down the chance to surrender their bonuses voluntarily, as MPs branded them "delusional characters" willing to blame everyone but themselves for the government contractor's failure. Seven former Carillion directors gave evidence to MPs at the start of a joint inquiry by two select committees into its liquidation, putting thousands of jobs and supplier companies at risk, leaving major public contracts unfinished and saddling the government's pensions lifeboat with an estimated £800m of liabilities. The Official Receiver made another 230 Carillion employees redundant, taking the total number of jobs lost ***so far*** to **1,371**. However, another 456 jobs have been saved -- because Carillion contracts have been taken on by other suppliers. The number of jobs protected to date is 8,110 out of 20,000.

During two sessions before MPs from the Business and the Work and Pensions select committees, former Carillion directors: *Denied being 'asleep at the wheel,' *Denied prioritising dividends over pension payments, *Spurned the chance to offer to give bonuses back, *Blamed Brexit, Qatar, the 2017 general election and each other, *Admitted failing to question the company's business model. MPs repeatedly accused Carillion directors of prioritising dividend payments over whittling down debts and plugging a pension scheme deficit estimated at £990m, wrote *The Guardian*. Howson said the company at one point raised its dividend "to show confidence in the future" of the business. MPs then heard of a meeting between trustees and the pensions regulator in 2013, the minutes of which indicate that trustees thought Carillion's fd at the time, Richard Adam, considered pension payments a "*waste of money*." Occupational pension fund reserves seem huge compared to the amounts paid out every year to employee pensioners….but cometh the evil hour of corporate collapse and suddenly, every penny at the back of the cupboard is needed.

Former directors apologised for their role in Carillion's demise, saying the company's debts and pension deficit became unsustainable as conditions deteriorated rapidly in early 2017. *Centre member **Clifford Chance** acquired Carillion Advice Service (CAS), the legal services arm and is taking on 60 paralegals in Newcastle-upon-Tyne. Clifford Chance said the new operations centre will work closely with its existing low-cost legal hub in India. Michael Bates, UK managing partner at Clifford Chance, said that CAS will help provide optimum service. CAS both gave support services to its parent company and had its own clients, including Carillion's outside legal panel firms for which it handles routine, low-cost legal work such as contract management, document review and due diligence.

*City institutional shareholders claimed a partial victory in the on-going house-builder **Persimmon** scandal as three of its top executives agreed to surrender £50m of shares earned through an uncapped LTIP scheme. Ceo **Jeff Fairburn** agreed to hand back around £25m of his potential £110m bonus, while chief financial officer Mike Killoran will give back £24m of his £78m payout. Group md Dave Jenkinson, who joined the board later than the other two, will give back £2.5m of his £40m bonus and all three will have their future payouts capped. Ashley Hamilton Claxton of Persimmon shareholder **Royal London Asset Management,** who had previously attacked the scheme, said the investment firm was "pleased that in the end Persimmon's board has listened to shareholder concerns on pay". She said the scheme was a "classic corporate governance failure" and the bosses' remaining payouts were still "extremely generous" but that she hoped the company and its shareholders "can now draw a line under this issue".

Fairburn claimed that he had never wanted his huge bonus and that he had decided to give a "substantial" amount of the windfall away through a charitable trust. He declined to say how much he would donate or which charities would receive the money. He had changed his tune, claiming that he decided some time ago to give some of his bonus away but had wanted to take an old-fashioned approach and keep the decision private: *"It's now clear that this belief was misplaced and so I am making my plans public and recognise that I should have done so sooner. I am setting up a private charitable trust which I plan to use to benefit wider society over a sustained period of time by supporting, in a very meaningful way, my chosen charities.* ***I would like to make it clear that I did not seek these levels of award nor do I consider it right to keep them entirely for myself.*** *Once it became apparent that our out-performance would lead to a very significant award for me, I made plans to use a substantial proportion of the total to support the charities that are particularly important to me and my family."*

Fairburn revealed his charitable donation after Persimmon had come under heavy pressure from major shareholders to oust him, unless he agreed to give up most of the highly controversial £110m performance-based package. Such a donation, when it is made, will substantially reduce his Income Tax and CGT bills, because of the tax relief such donations attract. He has already collected the first £45m of his bonus.

Anger over Persimmon's executive incentive scheme claimed the heads of Nicholas Wrigley, the chairman, and Jonathan Davie, the remuneration committee chairman. They stepped down last December after admitting to failures in the design of the company's LTIP by neglecting to cap the maximum potential bonus. He had previously argued that he was worth his gigantic bonus, saying: "*At the end of the day, the business has done very well,"* and *"you've got to put this into the context of what has been achieved".* The ceo of rival house-builder **Redrow** described the bonus being paid to Fairburn as "very, very wrong". Steve Morgan, founder of Redrow, said property industry bosses were "p--d off" with the vast amount of money being handed to Fairburn. Politicians, campaigners and City experts described the payout as "obscene" and constituted "corporate looting". Morgan, who holds a £750m stake in Redrow, said the largesse at York-based Persimmon was doing the whole of the industry a disservice. "One company has got it very, very wrong. Everybody in the industry is as peed off with this Persimmon thing as people outside it," Morgan told the *Evening Standard*. "For somebody like me, who has not taken a salary for 20 years, it sticks in the craw, being called a greedy house-builder because of that one company. I'm sick to the teeth of seeing the headlines about greedy house-builders." *Last year, Morgan gave 42m Redrow shares worth* ***£250m*** *to his charitable foundation. In total, he has donated around £300m.* Investors fear the controversy will set back progress on curbing excessive reward. Corporate governance specialists chalked up a string of victories last year as binding votes on remuneration policies forced boards including **BP** and **Imperial Brands** to rethink reward schemes and the quantum. However, city governance sources are disappointed in Theresa May's failure to tighten the regime further and view Persimmon as a key test of investor power. Persimmon's LTIP, approved in 2002, is the most expensive ever set up by a UK corporate and is making generous payments to around 140 senior staff in all. Fairburn benefited from the Government's *Help to Buy* scheme, launched by former Chancellor George Osborne in 2013. The taxpayer-funded subsidies boosted demand for new homes and lifted the Persimmon share price, inflating Fairburn's bonus. The shares nearly trebled in value.

Remuneration Report: minding your Ps and Qs

The landscape for executive pay is continuingly changing. Many companies are seeking shareholder approval for policies in 2018 and need to be mindful of the updated guidelines issued by institutional shareholders and changing market practice. There is changing practice on implementation reports too, said **Alex Beidas**, partner at **Linklaters,** writing in her report: '*Putting together your 2018 remuneration report'*

Claw-back and malus: The media are very focussed on claw-back and RemCo discretion to adjust bonus and LTIP outcomes (in particular following Carillion's collapse). There are two main issues, she said:

*Companies should check if their RemCo has sufficient power to reduce pay-outs for bonuses and LTIPs where the targets are met, but the resulting pay-outs do not reflect the underlying performance of the company. This could take the form of a financial under-pin, or reduced vesting where RemCo considers it appropriate. This does not normally fall within malus or claw-back provisions but has led to a call for payment caps or at least discretion to allow an adjustment. Caps are rare but introducing an under-pin is recommended. It can be done easily in the performance condition terms, it is not sufficient to include it in the policy. It is not necessary to amend the plan rules. Without it, companies can be left with a contractual obligation to pay out even if they consider that to do so would be inappropriate

*Most companies have introduced malus and claw-back, in line with the **UK Corporate Governance Code**. However, in many cases highlighted by the Press, malus and claw-back will not have helped because many companies have only very narrow malus and claw-back provisions, limited to a misstatement of accounts, fraud or misconduct. A balance must be struck between the devaluing of the award that wider malus and claw-back powers can incite, fairness, investor expectations and the practicalities of enforcing claw-back. Linklaters believes that the FRC will be looking at malus and claw-back more closely during the consultation on its proposed changes to the UK Corporate Governance Code. The FRC's draft board guidance says that committees should have discretion to adjust awards where the outcomes do not align to individual performance, or will not deliver the policy intentions.

Recommendations:

*include an under-pin in the performance conditions for LTIPs and bonus plans. Care should be taken to ensure enforceability

*stress test malus and claw-back provisions to make sure they are fit for purpose. In describing malus and claw-back provisions companies need to balance clarity and the need to manage shareholders' expectations. In particular, if claw-back triggers are narrow it would be preferable to spell the triggers in the policy so expectations are managed, rather than to refer to a general power to claw-back

*review your malus and claw-back policies and procedures to make sure that they will be enforceable. Recent case law means that process is more important than ever. If you have a policy you should review it and ensure it is used in practice. If you don't have one, we would recommend that you put one in place

Bonus deferral: The Investment Association now expects bonus deferral where the bonus opportunity represents more than 100 percent of salary. It does not specify the percentage that should be deferred. That is up to the RemCo, and presumably need not be the full bonus. Some level of bonus deferral is now fairly standard practice for all bonuses, so this will not represent a significant change for most companies. Those not already requiring deferral should be able to introduce it without requiring shareholder approval to a change to their policy.

Recommendations:

*check bonus deferral provisions

*refer to bonus deferral in your remuneration policy, set out below are our top tips of things to focus on. Check policy is consistent with plan rules and service contracts. Many companies have found that their policies do not fully reflect their practices or their directors' legal rights or expectations. This can cause problems because the company cannot make a payment which is inconsistent with the policy.

Areas which have caused the most problems are:

*notice periods and payments in lieu of notice

*recruitment awards

*payment of an out-going director's legal fees, outplacement fees, retirement gifts

*insurance policies *staff discounts *relocation and repatriation expenses

*payment of travel expenses

*provisions in 'grandfathered' contracts from before 2014 which were not adequately disclosed *rights on change of control, variations of capital and other corporate transactions

Recommendation:

*complete a compliance check of policy against service agreements and practice Maximum for each component.

The remuneration policy must state a maximum for each component of remuneration. *Most companies have not so far included a clearly ascertainable maximum in their policies.* The Investment Association has emphasised the importance of the maxima in the policy. It points out that even automatic inflationary salary increases can have significant impact on the overall remuneration package. It has indicated that investors will look closely at how any increases are justified expect RemCos to show restraint on overall quantum.

Recommendation:

*limit basic salary increases – perhaps by reference to inflation and/or average increases in the group

Performance conditions

Insufficient disclosure of performance targets, particularly for bonuses, remains an issue. It has become clear that investors expect full disclosure on a retrospective basis if upfront disclosure is considered commercially sensitive (and this must be justified).

Recommendations:

*include retrospective disclosure for bonus targets with a full explanation, in the year of payment. Note in the policy that this is the intention

*include targets for LTIP in the year after grant. Note in the policy that this is the intention.

COMPANIES

*Serious wages of capital are predicted by the *FT*'s *Lex* column for employee owners who work for **Farfetch.** Fashion retail platform Farfetch, which is advised by new Centre member **Index Ventures**, gave all its employees stock options early last year, as the best way of creating a team. The staff equity awards were already worth $40m even then – and much more now. Around 1,300 people, from junior staff to executives in 11 offices globally, were included in the scheme. Now Farfetch has teamed up with **Burberry** and **Chanel**, with the latter taking a stake in a company described as "*the world's greatest selection of luxury.*" JD.com, master of logistics in China and partner of all-employee fan **Tencent**, has already bought a stake in Farfetch. *Lex* thinks Farfetch could now be worth £1.27bn and might attract a Chinese bid, like employee owned **Skyscanner**. The Farfetch story is told in Index Ventures' book '*Rewarding Talent,*' written by **Dominic Jacquesson**. Sian Milne of Farfetch said: "We conceived a successful exit for the business and considered what a meaningful pay-out would look like for employees at each career level." Farfetch was founded by Portuguese entrepreneur José Neves in 2008. The deals will help solidify the company's reputation as a partner for luxury brands and their commitment to improving bricks-and-mortar services.

***Elior Group** offered 90,000 of its employees in France, Germany, Mexico, Portugal, Spain, the US and the UK the chance to subscribe to its first Esop. It takes the form of a capital increase reserved for employees who are members of a group savings plan. Elior is a leading operator in the catering and support services industry and is a benchmark player in the business & industry, education, healthcare and travel markets. Now operating in 16 countries, Elior generated almost €6.5bn in revenue from 25,000 restaurants and other sale points last year.

***HSBC** awarded departing ceo **Stuart Gulliver** a £6.1m pay package for his final year in charge, teeing up a possible clash with investors who have challenged the lender's largesse for years. Gulliver, who is leaving after more than 37 years' service, earned an annual bonus of £2.1m in 2017 on top of £3.9m in salary, allowances and benefits. In addition, he was awarded £4m worth of shares in an LTIP in a year that also saw a nine percent rise in the bank's variable bonus pool. HSBC said the payout reflected the fact that Gulliver had hit four-fifths of his performance targets, which included reducing the bank's global reach and maintaining tight controls on risk and regulatory compliance.

*Charitable organisation **Motability,** the outcome of years of campaign for the disabled by late Wythenshawe Labour and Co-op MP Alfred Morris, was accused of allowing top executives to earn more than ***£1m a year***, dwarfing salaries earned by other charity counterparts who are on an average of £255,000 p.a. MPs want it to return to the **Treasury** most of its £2.4bn unspent cash reserves. Motability offers a fleet of vehicles to wheelchair users and others in return for part of their state disability allowance. If the Treasury had this spare cash, it could fund 68,000 police officers for a year, the building of two hospitals and cover prostate cancer research for a decade. The scheme is funded by taxpayers – indirectly – through disability allowance payments. Motability needs to borrow to fund the purchase of new cars and its 630,000-strong fleet is worth £6bn. While investors who lend funds to Motability get their money back, plus interest, the Government does not. "*This is a non-profit, charitable scheme for the disabled – but the men who run Motability Operations earn vast sums and enjoy luxury lifestyles. Their pay bonanzas go up to £1.7m a year,*" said the *Mail Online*. Mike Betts 55 has been ceo of Motability Operations since 2003 and is paid as much a month as the prime minister earns in a year. His £1.7m reward last year is almost 12 times Theresa May's £150,402 salary. His pay soared in his decade at the helm – totalling almost £15m over that period – with the true figures buried in the small print of the company's accounts. In 2008 Betts was paid £355,956 in basic salary, but adding bonuses, pension and LTIP payments his salary package ballooned to £954,749. Last year Betts was on £549,258 in basic pay alone, but the annual report small print showed his earnings had crept up toward £2m. He is described as the *'highest-paid director*,' rather than by name. With his bonuses and various other payments, he was paid £1.7m and awarded a further 'deferred' bonus of £263,000 for his work in 2017, due to be paid in 2020 – which would raise his total reward last year to £1.96m. David Gilman, 65, Betts' 2iC until he retired in September 2016, earned an estimated £1.1m in his final year in the job. After 13 years at Motability, he accrued a large package of pay and perks. Although the 2016 accounts specify a figure of £548,000 for his basic salary and bonuses, Mr Gilman, an accountant, scooped a 'deferred bonus' along with a LTIP payment, which roughly doubled his 2017 earnings. The deferred bonus is payable in two or three years' time. "As an old friend of Alfred Morris I know he would turn in his grave at these abuses", said Centre chairman Malcolm Hurlston.

*Struggling retailer **New Look** scrapped a £12m bonus incentive scheme for top managers and directors after a sharp decline in the chain's fortunes. The bonus plan was drawn up in 2015 and boosted a year later by several millions amid hopes that the chain was heading for stellar growth. However, the bonuses, which were linked to the value of shares, were vetoed after the company's South African owner **Brait,** the investment company, cut the nominal value of the fashion business to zero. It is considering a plan to close up to 60 stores after a disastrous period that led to the departure of previous ceo Anders Kristiansen. He and other directors had been in line for millions, with the first tranche due to be paid this September, but other managers had been given shares worth just £2,000.

***Tesco** faces the UK's largest ever equal pay claim and a potential bill which could reach £4bn. Thousands of Tesco's female employees could receive back pay totalling £20,000 per head, if the legal challenge demanding parity with men who work in Tesco's warehouses is successful. Lawyers say hourly-paid female staff earn less than men, even though the value of the work is comparable. Tesco said it had worked hard to ensure all staff were paid fairly and equally.

Announcements under the MAR, Disclosure, Guidance & Transparency Rules

***CVS**, one of the UK's leading providers of integrated veterinary services for small and large animals, was forced to admit to the **Financial Conduct Authority** that it had failed to issue more than 36,000 ords – promised last December - under its Long Term Incentive Plan (LTIP) due to "an administrative oversight." CVS confessed in its regulatory news update: "Further to the announcement of December 18, notifying that options over 243,205 ords in relation to the CVS Group LTIP 2014/2017 had been exercised, the company has identified that 36,315 ords of these LTIP 8 Shares were not issued at the time due to an administrative oversight. 8,315 LTIP 8 Shares were issued on February 6 and the balance of 28,000 LTIP 8 Shares were issued on February 14."

In addition, CVS announced that 46,084 ords of nominal price 0.2 pence each were issued on February 1 and 17,448 ords were issued on February 9 as a result of the exercise of employee share options, in connection with the company's December 2014 - December 2017 (*January 2018 maturity*) 2017 SAYE Scheme. Furthermore, 36,600 *new* ords were issued in February in connection with the exercise of options.

Source: Nominated advisor & broker N+1 Singer and CVS FD Nick Perrin.

***Bango**'s total issued share capital after the issue of 40,187 new ords following the exercise of employee share options during January, was 69.8m ords each with voting rights. Of the total, 40,013 have been admitted to trading under the block listing for the Bango plc 2005 Employee Share Option Plan and 174 have been admitted to trading under the Block Listing for the Bango plc 2017 Employee Share Option Plan. Bango does not hold any shares in treasury. Bango is the standard platform chosen by leading global stores to deliver mobile payments to everyone. As the next billion consumers adopt their first smart phone and look for universal payment methods, Bango will be there to unlock the world of apps, video, music, games and other content. Global stores plugging into the Bango Platform include Amazon, Google, Samsung and Microsoft.

***Blue Prism**, a global leader in robotic process automation (RPA), announced that on January 31 an award of 41,284 market value options was made to Ijoma Maluza, the group's cfo. Of these, 39,079 options were awarded under the Blue Prism Group Employee Share Plan and 2,205 of the options were awarded under the Blue Prism Group Company Share Option Plan (CSOP). These options have an exercise price of 1360p, being the closing mid-market price of an ord on the day prior to the date of award. The options will vest after three years, subject to continued employment. UK based Blue Prism is a leader in RPA, which enables organisations to create digital workforces powered by Blue Prism's ***software robots** that are trained to automate routine back-office clerical tasks.* The Group's enterprise-grade software enables the automation of manual, rules-based, administrative processes to create a more agile, cost effective and accurate back-office. Blue Prism's RPA software has already executed more than one billion transactions for its customers, which include AEGON, BNY Mellon, Commerzbank, IBM, ING, Maersk, Nokia, Nordea, Procter & Gamble, Raiffeisen Bank, Siemens, Westpac and Zurich. Blue Prism has 190 employees working in UK offices and worldwide.

***Coca-Cola European Partners** issued and allotted 172,873 new ords of nominal value €0.01 each under three employee share schemes: The Coca-Cola Enterprises, Inc. 2010 Incentive Award Plan, the Coca-Cola Enterprises, Inc. Legacy LTIP and The Coca-Cola European Partners LTIP 2016. Source: Paul van Reesch, Deputy Company Secretary Coca Cola European Partners.

***Cohort plc** was notified on February 9 by the trustees of the Cohort EBT that they had purchased 50,000 ords of ten pence each in the company at a price of 338.83 pence per share. The shares held in the EBT are intended to be used to satisfy awards made under the Cohort employee share schemes. The executive directors of Cohort are included in the class of beneficiaries of the EBT. Following these transactions, 397,845 ords, representing 0.97 percent of Cohort's voting rights, are held in the EBT.

***Creightons plc** announced that following the exercise of options by participant of its employee share option scheme, 40,909 new ords of a nominal one penny each were issued at a cost of £2,250 The company now has 60.6m ords in issue with voting rights. Creightons does not hold any shares in treasury. Source: Nicholas O'Shea, Director.

*AIM listed **Inland Homes** on January 18 transferred 175,000 ords of nominal value ten pence each from its treasury account to satisfy employee share options exercised within the terms of the company's unapproved share option scheme. Following this transfer, the company held 825,000 ords in treasury. Its total issued share capital (including treasury shares) comprised 203,654,432 ords of ten pence each. Inland Homes plc EBT currently holds 1,627,066 ords and *shall abstain from exercising its voting rights at any general meeting of the company*.

***Jardine Lloyd Thompson Group** plc was notified that, on February 12, the trustees of the company's HMRC approved all-employee share plan purchased 5,982 of its own shares and from these allocated a total 52 shares of a nominal 0.05p to Directors of the Company/Persons Discharging Managerial Responsibilities in the Company (PDMRs). These shares were acquired by the trustees by way of market purchase at a price of 1298p per share. Source: Darren Lennark, group company secretary.

***Konecranes** plc decided to issue 17,995 free shares to employees as a reward payment for the 2014-15 savings period of Konecrane's employee share savings plan.
A maximum of 500,000 shares may be issued to employees as part of this plan, approved by shareholders at last year's agm. The shares were being delivered to plan participants on February 28. After the share delivery, the company will hold 147,766 of its own shares. Konecranes is a €3bn a year turnover world-leading group of lifting businesses, serving manufacturing and process industries, shipyards, ports and terminals. Konecranes provides productivity enhancing lifting solutions, as well as services for lifting equipment of all makes. The Group has 16,400 employees at 600 locations in 50 countries. Konecranes shares are listed on the Nasdaq Helsinki.

***Land Securities Group** confirmed that on February 7, **ACS HRS Solutions** Share Plan Services (Guernsey), acting as trustee of the Land Securities deferred bonus plan trust, purchased in the market 250,000 company ords of nominal value 10.66p each at a price of £9.48 per share. The trust holds shares for the benefit of the employees and in particular for satisfying the vesting of awards made under the various Land Securities employee share incentive plans. Executive directors Robert Noel, Martin Greenslade, Colette O'Shea and Scott Parsons are amongst the potential beneficiaries of the trust. Following this transaction, the trust holds almost 1.1m shares, representing 0.15 percent of the company's issued share capital with voting rights.

***Ocado** ceo Tim Steiner participates in the six year old Ocado Share Incentive Plan (SIP). Under it, employees are able to purchase partnership shares in the company of a nominal two pence each at market value, using deductions from salary each month, and receive allocations of matching ords. Mr Steiner purchased 31 partnership shares at a price of £4.73 per share and was granted four free matching shares. Three other Ocado directors each purchased either 31 or 32 partnership shares and each received four free matching shares, which are held by the EBT for the SIP. Source: Neill Abrams, company secretary.

***Smith & Nephew** purchased 300,000 of its ords of nominal value $20 each through JP Morgan Securities, as approved by shareholders at the company's agm in April last year. The average price paid for each share was £12.57. These shares were issued re Smith & Nephew employee share schemes in the fourth Quarter of 2017 and have been purchased as part of a programme to reduce the company's share capital, in order to keep it broadly constant. Days later, Smith & Nephew bought a further 257,240 of its ords for the same reason at the slightly higher average price of £12.65 each. Following the purchase of these shares, Smith & Nephew held 16,174,019 of its shares in Treasury. The Company's issued share capital, with one voting right per share comprises 874,962,530 ords (excluding treasury shares).

TRUSTEE NEWS

(1) The doctrine of mistake: Regarding tax liabilities, in **Whittaker v. Concept Beneficiaries Ltd (Guernsey Judgment 15/2017)**, the court heard an application on the basis of equitable mistake. Acting on the advice of professional advisors, the applicant transferred her shares in the **Slimming World** companies into remuneration trusts set up with the purpose of reducing her and her heirs' tax exposure. Her new financial advisers discovered that the previous tax advice had been incorrect and the structure would not have the tax advantages it had aimed to achieve and would instead have negative tax consequences. The jurisdiction was Guernsey and the applicable law relating to the mistake was that of England and Wales. This case dealt with the question of *whether the court should grant relief where the mistake took place in the context of tax avoidance*. The court distinguished this arrangement from "artificial tax avoidance transactions." The Lieutenant Bailiff noted that here there was a genuine transfer of the shares into the trusts with genuine trustees. The transfer had been made on the basis of incorrect professional advice, would not have been carried out had the applicant known the true position and, if uncorrected, would have meant that the applicant had divested herself of her controlling shareholding in her companies for non-existent tax advantages. *Accordingly, the relief was granted and the transfer was set aside. The relief was not prevented by the passage of some eight years between the creation of the scheme and the discovery of the error*. **Appleby** acted in Guernsey as the representative of the minor, unborn and unascertained beneficiaries of the sub-trusts declared concerning the remuneration trusts in Whittaker v. Concept Beneficiaries Ltd. The rights of the unborn children of beneficiaries has been the subject of frequent Centre/STEP presentations.

(2) Baxendale Walker were the advisers in the **Rangers** soccer club case which involved an EBT structure for loans to players in order to avoid income tax and NICs. Here, however, the use of an EBT was designed to avoid CGT and Inheritance Tax. Transfers of shares to an EBT which meet the conditions at s86 IHTA 1984 can be IHT exempt under s28 IHTA 1984, however the trust must exclude (from benefiting from the trust): *the settler, where they are a participator in the company and *any persons connected with him, such as family members and *this includes where connected persons are able to benefit after the settlor's death (described in the case as the "post death exclusion construction"). Mr Barker was the majority shareholder in a private group of companies: He was looking to sell the group and wanted to mitigate CGT and IHT. After taking advice from BW he transferred his shares to an offshore EBT prior to sale. The EBT excluded him and his wife and their children from benefiting during Mr and Mrs Barker's lives, but allowed the children and remoter descendants to benefit after their deaths.

HMRC issued assessments and challenged the validity of the EBT scheme on the basis of the post-death exclusion construction. Mr Barker settled with HMRC paying over £11m in tax and interest. He took steps to unravel the scheme and sought damages in negligence against BW, claiming: *BW should have specifically warned him of the risks that their interpretation of s28 could be incorrect and as a result the scheme could fail. The High Court judge found that BW were **not** negligent: *They had not failed any duty of care to provide a specific warning of the risk of the scheme failing. *Any careful and competent solicitor of appropriate expertise would not have given a specific warning. *They should have given a *general health warning* about the risks of implementing a tax avoidance scheme and were in breach of duty for failing to do so but this would not have deterred Mr Barker and therefore this breach was not the cause of any loss. *He was in agreement with BW's interpretation of s28 (which was contrary to HMRC's).

Mr Barker appealed on the grounds that: *The judge was wrong to conclude that BW did not act in breach of their duty by failing to give a specific warning. *He placed too much reliance on HMRC's GAAR guidance regarding the intention of the s28 exemption to support his decision.

The court of appeal overturned the High Court decision and upheld Mr Barkers appeal finding: *HMRC's construction of s28 was very likely correct and the high court judge's contrary view had affected his decision. *The GAAR guidance was of little help to determine whether there was a substantial risk in the circumstances. Advisers *RossMartin* said: *It's unusual for the courts to find in favour of taxpayers implementing tax avoidance schemes, but in this case the court was able to agree with HMRC and at the same time uphold the taxpayers appeal.*

"**It is a reminder to advisers to spell out specific risks to their clients where aggressive planning is being entered into; in this case a blanket health warning simply wasn't enough.**"

WORLD NEWSPAD

Ireland

Ceos at some of Ireland's biggest companies earn an average of more than €2m a year, claimed the **Irish Congress of Trade Unions (ICTU),** which said that many Irish ceos earn more in bonuses and salary top-ups than they do from their basic salaries. The ICTU examined the earnings of the ceos of the 20 biggest firms listed on the Irish Stock Exchange, 12 semi-state organisations and seven large Irish companies listed in London. It found the average basic ceo pay of the Irish companies listed on the Irish Stock Exchange was €786,000 in 2016 compared to €701,000 in 2015 – well above the basic pay of the London-listed bosses, which was €568,000. After bonuses are taken into account, the average total pay in 2016 for the ceos of the 27 listed companies was €2.1m. CRH boss Albert Manifold was the highest earner with a basic salary of just €1.4m but total earnings of more than €10m in 2016 – almost double what he earned in 2015. The heads of **Tullow Oil, Kerry Group** and **Greencore** rounded out the top five with total earnings of €3.8m, €3.6m and €3.3m respectively. London-listed oil and gas explorer **Aminex** had the lowest ceo pay of any company polled – boss JC Bhattacherjee had a total pay packet of €335,000 in 2016. The ICTU said it would take someone on €36,900 – the average wage for an Irish worker in 2016 – 270 years to earn what Albert Manifold earned in 12 months. This is an increase on the 151 years the ICTU estimated the same person would need to match his 2015 earnings.

Germany:
Deutsche Bank made its third annual loss in a row as the lender reported its lowest revenues in seven years, yet Germany's largest lender appeared ready to shower its managers with bonuses. Despite the fresh loss of nearly €500m, Deutsche said that it would hand staff in its investment banking division pay and bonuses worth more than €1.2bn, a rise of 45 percent year-on-year, even as the business slumped €700m into the red. The reason, according to the bank, was to avoid a brain drain of talent to Wall Street rivals. In the run-up to the annual results conference, there had been a furious debate about bonuses on Deutsche's board. Bonuses amounted to €2.4bn in 2015, but were slashed to €500m after profits nose-dived the following year. According to insiders, the feud about the size of 2017 bonuses erupted late last year, with ceo John Cryan said to be opposed to an increased payout. That was even before Deutsche Bank announced earlier this month that it would make a slight loss for 2017, due in part to changes in US accounting practices for tax credits. Net income of €497m for 2017 was an improvement on the €1.36 bn loss the bank recorded in 2016. On a pre-tax basis, Deutsche reported a profit of €1.29 bn against an €810m loss the year before.
Following job cuts in several industries, including at German household names such as **Siemens** and **ThyssenKrupp**, the bonus largesse was too much for some German politicians. "Everywhere bank branches are closing, customers are losing their advisers, consultants their jobs," bemoaned Martin Schulz, head of the centre-left SPD party. In this situation, €1bn in bonuses "not only damaged the bank's reputation, but our entire community of solidarity." Angela Merkel's government took a swipe at Deutsche Bank: while Deutsche was a private enterprise, "*the management of the company should of course ask what an impression this makes in the public eye*," said Steffen Seibert, a government spokesman. Ingo Speich, a fund manager at **Union Investment** – a major shareholder of Deutsche Bank – suggested bonuses should be distributed only to those who add genuine value to the company, especially given the dire consequences if profits do not follow. "If returns still do not bubble up in a few years, the unthinkable could happen: a break-up of the bank and a merger with other major European banks," he told *Die Welt*. Some of Deutsche Bank's top executives, including board members Marcus Schenck and Christian Sewing, defended these hefty payouts, saying the bank would otherwise lose valuable talent that keeps the institution competitive. "It's an investment decision like at a soccer club. If you want to compete for a title, then you just have to keep or get certain players," said Mr. Schenck, who runs the investment banking division together with Garth Ritchie.

USA:
***ceo-employee pay ratios disclosure**
A group of US ceos earned 140 times more last year than the median employees at their companies, according to a survey that gives a first glimpse of newly required pay ratio disclosures. Workers at the 356 public companies included in the study received $60,000 in median compensation, **Equilar** said in the report, which didn't include individual ceo reward figures. Thousands of US companies will reveal the ratio for the first time in coming months, required as part of the 2010 Dodd-Frank Act. Supporters of the rule hope it will highlight growing income inequality and force corporate boards to rein in excessive executive compensation. Critics see the provision as a populist measure intended only to shame ceos, saying it's costly to calculate and difficult to compare from one industry to the next. Consumer-discretionary businesses included in the study reported a median pay ratio of 350-to-1, the largest among all industries, while the energy sector's earnings gap of 72-to-1 was the smallest. The findings were reported by the *Wall Street Journal*. The ratio presents ceo total reported pay -- including salary, bonuses, equity awards and other benefits -- as a multiple of the compensation earned by the company's median employee. Publicly traded US businesses, excluding emerging-growth companies and investment firms, must disclose the ratio for fiscal years starting on or after Jan 1 last year, seven years after Dodd-Frank became law. The delay underscored the rule's troubled past. For years, it remained bottled up at the **Securities and Exchange Commission**, which didn't publish guidelines on how it should be calculated until 2015.
***Altria Group**, one of the world's largest tobacco and cigarette makers, is giving its employees a $3,000 bonus with a fraction of its windfall from the federal corporate tax cut. The *Richmond Times-Dispatch* reported the one-off payout to 7,900 non-executive employees, costing the company $24m. Altria posted a $10.3bn profit for 2017, almost half of it in the fourth quarter as the company adjusted deferred taxes to benefit from the lower rate. The Richmond-based corporation announced plans to set aside $35m over the next three years for donations to philanthropic programmes, mostly centred on youth development and workforce preparedness, in communities where it operates. *Many companies*

announced either one-off bonuses or wage increases now that their corporate income tax rates have been substantially lowered.

Wynn's winner bonus rights**: Having served as ceo and chairman of **Wynn Resorts** since 2002, Steve Wynn, the billionaire mogul has agreements in place that could force the casino operator to pay him up to an additional ***$330m for stepping down—even though he did so under fire over sexual harassment accusations. Wynn, whose net worth is already estimated at $3.4bn, may collect more. Wynn said he felt compelled to resign due to "an avalanche of negative publicity" in the wake of a January *Wall Street Journal* article, which alleged decades of sexual misconduct, including pressuring an employee to have sex with him. Wynn denied the accusations and said: "I have reached the conclusion I cannot continue to be effective in my current roles." As the founder of Wynn Resorts, however, Steve Wynn's longstanding employment agreement provides for a massive severance package if he is terminated "without cause," or by his own volition "for good reason." Not only has Wynn Resorts promised to pay its top executives their salary and bonuses for each year remaining in their contracts, the ceo has a special agreement that gives him a big extra boost: ***he is entitled to receive* triple *his annual allotment for a maximum of four years.*** Because Wynn's employment contract extends until autumn 2022, he could receive three times his annual salary and bonus for the next four years. That means his salary of $2.5m would balloon to a payout of $10m, and his latest bonus of $25m (split evenly between cash and stock) would multiply to $300m—adding up to a total of $330m. On top of that, Wynn is owed $232,971 in benefits, according to Wynn Resorts' latest disclosures.

Australia:

Australia has given its financial regulator sweeping powers to cap bank bosses' pay, delay their bonuses and even ban them from the industry if found guilty of non-compliance, as it scrambles to restore trust in the scandal-hit sector. Under the new law passed by the Senate, banks in Australia, the world's No.12 economy, must do business with "honesty and integrity" and their senior executives will be held directly accountable for non-compliance.

"This legislation is part of a broader suite of financial services reforms ... to put consumers first, ensuring Australians can have trust and confidence in the banking system," Treasurer Scott Morrison said in an emailed statement.

The Australian Prudential Regulation Authority (APRA) can cap and delay executive bonuses, disqualify executives from the industry and levy fines of up to US$166 m). Shareholders and investors have been disappointed with the high salaries that banks' top brass continue to draw amid mounting worries about the integrity of the sector.

France:

French based multi-national **Air Liquide** signed a share purchase agreement on February 15 with a financial institution in the context of its share buyback programme. The agreement set a volume of **630,000** Air Liquide shares (representing 0.147 percent of the share capital of the group for a maximum price that shall not exceed the authorised (i.e. €165 per share – currently trading at €102 per share). The shares purchased under this agreement shall in part be cancelled and in part be reserved for the implementation of performance shares plans or employee share ownership transactions of Air Liquide.

SouthAfrica:

South African retail healthcare group **Clicks**' employees are set to receive a major windfall of R1.27bn after selling up to 7.6m Clicks Group ords at R166 (**£2.72**) per share. Shares are held by 6814 employees, with black employees holding 87 percent of the shares. Pharmacists comprise five percent of the Esop beneficiaries. Participating employees receive a cash dividend annually, equal to ten percent of the total dividend paid to ordinary shareholders each year. The Clicks Group ESO Trust (Esop Trust) disposed of the shares to unwind 50 percent of the scheme. Only full-time Clicks employees were permitted to participate in the scheme, and entry into the scheme closed in 2015. "The Esop Trust is pleased to announce that the book build has been successfully completed and that 7,642,904 book-build shares have been placed with 35 participating investors on behalf of the beneficiaries of the Esop Trust (beneficiaries), who elected to sell their Clicks Group ords at the book-build price of R166 a share," the group said. Last October, the group revealed plans to grow its stores to 900. It said it would invest R680m during the 2018 financial year to add 25 to 30 new stores, and about 35 pharmacies. In the year to August, the group posted a 15.4 percent rise in operating profit to R1.8bn. The opening of 111 stores, including 80 through an outsourcing agreement with the Netcare Group, bumped up its store footprint to 622. Its pharmacy network rose to 473.

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