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it's our business

newspad of the Employee Share Ownership Centre

New EMI key employee option grants dry up

The tax-approved **Enterprise Management Incentive (EMI)** share options based scheme used by thousands of entrepreneurs to attract and retain top talent was at semi stand-still as *newspad* went to press, amid a bureaucratic delay in Brussels. Replying yesterday to Lord Stephenson, who worked with Gordon Brown the creator of EMI, Treasury minister Lord Bates said: "The government began the process of renewing the state aid approval for the EMI scheme early last year. The European Commission are considering the application. A further update will be provided in due course".

EMI, currently being used to boost the reward of 23,000 key employees in fast-growing SMEs, many in high tech sectors, was plunged into uncertainty after the **European Commission (EC)** failed to renew its state aid bar exemption before it expired almost a month ago on April 6.

This forced HMRC into issuing an emergency warning to **8,600** EMI user companies that any new sets of options issued to key staff from April 7 onwards might no longer qualify for Income Tax and NICs relief - until such time as the exemption was renewed by Brussels.

As a result, say practitioners such as **William Franklin**, of Pett Franklin, and **Stephen Diosi** of Mishcon de Reya, the issue of EMI options has been reduced to a tiny trickle – those already pre-agreed between companies and employees prior to the expiry of the exemption.

However, **Nigel Mason**, director of Eso and employee ownership advisers, **RM2,** said: "Delaying EMI option awards is unnecessary as there are many possible remedial steps that could be taken in the unlikely event of the state aid approval being declined."

SMEs were holding back from the issue of fresh EMI options for fear that HMRC might feel legally obliged to treat them as non-approved options, unless Brussels announced a speedy renewal of the state aid bar exemption.

This is an ultra sensitive issue for the UK government, which is desperate not to upset Brussels in the margins while the Brexit negotiations are still very much in the air.

Strict rules on financial aid given to businesses are imposed by Brussels in order to ensure fair competition within its single market. The rules are intended to stop governments giving cash to companies, which might give them an unfair advantage over rivals within the EU. In some cases, however, as for EMI, these rules are waived, when it comes to supporting the development of new firms which create jobs and develop new technologies but the Brussels bureaucracy cannot always approve complex applications in only a few months, according to *The Daily Telegraph.*

HMRC said that the government was working to ensure that the period between expiry of the existing approval and a decision by the Commission on a renewed approval was as short as possible. In the meantime, affected companies were told:

'HMRC considers that the state aid approval applies to the granting of share options and therefore share options granted up to and including April 6 2018 won't be affected by this lapse of the approval. EMI share options granted in the period from April 7 2018 until EU State Aid approval is received ***may not be eligible for the tax advantages presently afforded to option holders,*** *and accordingly share options granted in that period as EMI share options may necessarily fail to be treated as non-tax advantaged employment-related securities options.*

From the chairman

The result of close collaboration between HMRC, the Centre and other share scheme bodies, the Worked Examples Group gave its first approval last month to an example submitted by Graeme Nuttall OBE. The example will be made public on the Centre's website shortly and later by HMRC. Since the work started with William Franklin and SAV, the need for working together has become more clear and the small WEG acorn is likely to grow beyond its initial scope. Meantime more worked examples will be sourced and submitted in line with the initial focus.

Other good news was the elevation of Esop fan Sajid Javid to the Home Office, one of the great offices of state. His is the personal credit for much of the Royal Mail success when he ensured extra shares for all employees. With the Prime Minister involved in a Roadchef question and Lord Stevenson asking about EMI (the creation of Gordon Brown, with whom he worked at the time), our concerns are heard in high places.

Malcolm Hurlston CBE

"Companies may wish to consider delaying the grant of employee share options intended to qualify as EMI share options until fresh EU state aid approval has been given.

"HMRC will continue to apply its current guidance and practice, regarding employment related securities options validly granted no as EMI share options before April 6. A further update will be provided in due course."

The EC is thought to have backdated state aid approvals for EMI schemes in the past and this could happen once the renewal application is approved, but when will that be? Tax barrister **David Pett** of **Temple Tax** had a meeting at HM Treasury about EMI share option reliefs and the lack of EU State Aid approval: "The long and the short of it is: - *approval is not expected to be received for a number of weeks (i.e. it is presently anticipated to be secured within weeks, not days, rather than months);* Mr Pett told *newspad.*

"As there is no reason to suppose that fresh approval will not be forthcoming, there is as yet no contingency planning for claw-back of reliefs for options purportedly granted as EMIs since April 6, should the fresh approval not be retrospective, or not be forthcoming.

"In response to our request, consideration is being given to the status of fresh options granted after April 6 2018 as part of an EMI ***option exchange*** (as provided for in Schedule 5, ITEPA) and which, if granted in exchange for EMI options granted on or before that date, would otherwise qualify for reliefs," he said. There were dangers in going ahead with issuing new EMI options without a guarantee of approval, but he added: "If a company needs to grant employee share options before fresh state aid approval has been received and such options would otherwise be expected to qualify as EMI share options, careful consideration needs to be given to the terms on which they are granted so that, if necessary, *the parties could cancel and re-grant such options at a time when they will qualify for the tax reliefs associated with EMI share options.*"

HMRC statistics reveal that **2,860** UK companies granted EMI share options, worth an initial collective £380m to 23,380 key employees in the fiscal year 2015-6. However the total number of companies who were still registered under the EMI scheme in that year was **8,610.** Many of these had granted EMI options in the two previous years, but not during 2015 -16. The average value of such options in the year of grant was £16,900 per head. The cost to the Treasury of employees who exercised their EMI options - in terms of lost income tax and NICs revenue - was **£160m** in that year.

Members offered several issues for answer in parliament about the effective suspension of EMI:

**Knowing that state aid exemption was due to expire on April 6 2018, why did not the government apply to the Commission a year in advance for an extension of the exemption?*

Will HMRC refuse to give the Income Tax/NICs reliefs to **new options granted by EMI users in this new tax year 2018-19 if the exemption is not renewed?*

What about EMI user companies who signed up to awarding key employees a **second or **third tranche** of EMI options in this new tax year? Would HMRC refuse to give the appropriate EMI tax and NICs reliefs on **those** options, bearing in mind that the companies could be sued by affected employees if the company then refused to offer the second or third tranche options, fearing that part of the tax bill would then fall on them if these employees refused to pay such tax bills themselves?*

Does HMRC/Treasury fear that, unless the exemption renewal is forthcoming, the EMI scheme could terminate **entirely after March 31 2019, beyond which the UK will no longer be a member of the EU, though still held to its practices and procedures under terms of the transition period? Unless the Commission agrees to renew the state aid exemption to EMI before March 31 next year, EMI would be in danger of collapse because legally thereafter the Commission would have no locus to even consider the issue, transition or no. That would mean no more EMI tax exemption. HMG would then be in a tight spot because it if did a UDI by re-introducing the EMI tax exemption, without EC agreement, then the Commission could introduce financial sanctions against HMG during the transition period.*

Under EMI, which was introduced by **ex PM Gordon Brown** when he was Chancellor in 2000-1, key employees at firms with assets of £30m and under can be granted share options worth up to £250,000 over three years. They do not have to pay tax nor NI on these shares. These tax breaks make EMI very popular among start-ups which cannot afford massive salaries to attract top talent. It has proved to be by far the most popular tax-approved employee equity scheme ever seen in the UK

Theo Saville, founder of tech firm **CloudNC**, which specialises in artificial intelligence software for metal cutting, said he was "very shocked" to learn the scheme would be suspended. Fifteen members of his team benefit from EMI, and he said that many start-ups, including his own had to suddenly rush through applications for it. "Investors have been sending around panicky emails. There was very little – just two days' – advance warning," he explained. Those taking on new staff would be left looking foolish until the EU approved the scheme, he added, as new share options could not be issued until the government "sorts its act out," he told *The Daily Telegraph.* The timing of the EMI setback, at the start of the new financial year, was irritating for small firms.

UK businesses that planned to grant new share options after April 6 this year to employees under existing EMI schemes, or set up new EMI schemes after that date, should consider waiting to see whether the tax advantages they promise are re-approved under EU State aid rules, warned share plans and incentives experts. **Christine Yuill** of Centre member - **Pinsent**

Masons said: "*Unlike the other three UK tax-advantaged employee share scheme types, EMI options involve the provision of state aid by the UK to companies granting them. This is because the benefits of EMI options are restricted to companies with certain business activities, unlike SAYE, SIP and CSOP (Company Share Option Plan),"* she said.

EMI options were approved by the Commission on July 9 2009, but not yet renewed after the exemption period expired. ***As EU state aid policy evolves significantly over time, any new approval may impose new or amended requirements for EMI options granted under that approval.***

Ms Yuill added: "Companies planning to grant new EMI options soon will be less pleased, particularly given that previous brief government updates confirming that state aid approval was being sought did not directly address the possibility that it would come later than April 6. Companies should consider carefully how to manage possible grants after April 6 2018 and before any new approval is issued and seek advice about this, as such grants may not qualify for any tax advantages."

EVENTS

Airbus jets into Paris for *newspad summit*

A major all-employee share plans case study involving pan-European plane manufacturer **Airbus,** which employs 133,000 people, will be a shop window for the international employee equity *newspad* summit in **Paris** on **Thursday & Friday, June 21-22.** This not-to-be-missed extended speaker slot is led by **Jennifer Rudman** and **Graham Avinou** of **Equiniti**, together with Toulouse and Munich based **Angelina Lederle,** group compensation & benefits group specialist at Airbus.

They will describe the Airbus Esop and its Share Incentive Plan (SIP) and will discuss why the plans were set up, what its features are and reveal how they provide benefits for Airbus' global employees.

Further all-employee equity case histories will be presented in Paris by the French global manufacturing giant **Saint Gobain**, which employs 180,000 worldwide, and by Centre member **Solium**, whose speakers will deliver insights from a recent survey of 120 global companies.

Dominic Jacquesson, of Centre member **Index Ventures,** has devised a new slot entitled *Comparing Pan-European & US ESO Start-Ups*, to explain why Europe's entrepreneurs will need to increase all-employee ownership in their businesses if they are to have any hope of creating their own type of *Google* or *Facebook* world-beating business. For **all**-employee ownership is a key element in successful US start-ups – stock option grants not just for the few at the top, as in many European start-ups, but option grants, often without performance conditions, for all employees - to motivate everyone in the team, he will say.

"*The US knows how to do this, so why not you too?"* he will ask delegates. Index Ventures is a venture capital firm with a dual HQ in San Francisco and London, investing in technology-enabled companies, focusing on e-commerce, fintech, gaming, enterprise software, productivity, and security.

The employee equity *newspad* summit is being hosted and sponsored by senior Centre legal member **Linklaters** at its offices at **25 rue de Marignan**, **Paris 8,** just off the Champs Elysées. Large plan issuer companies already registered to attend the summit include: **Airbus**, **Saint Gobain, Societe Generale** and **Thales.**

On the regulatory front, **Rasmus Berglund** of **Linklaters** takes us through both GDPR and MifidII (*Markets in Financial Instruments Directive II*) to see how they are bedding down in the employee equity world. The Linklaters' team includes **Lionel Vuidard** and **Géric Clomes**, from its Paris based employment and incentives division, who will discuss President Macron's financial reforms, including new tax reliefs for profit-sharing companies employing less than 250 people.

On the vexed issue of **Brexit, Nicholas Greenacre** of **White & Case** will discuss the Great Repeal Bill, securities law exemptions, the Prospectus Directive and the post Brexit appetite for employee equity plans.

A potentially sulphurous debate on executive equity rewards will be preceded by a presentation by **Damian Carnell,** director and remuneration adviser at **Willis Towers Watson.** Damian will examine the role of equity in the executive package and the executive personal portfolio. He will discuss what investors want, why and where we are going next. Other confirmed speakers include: **David Craddock Consultancy Services; Esop Centre**; **Pett Franklin** and **RM2.**

The Centre's Paris based friends, **FONDACT** and the **International Association for Financial Participation** *(of employees in business)* will explain other developments in French multi-national all-employee equity plans.

The programme will contain more than a dozen slots and open debates, spread over two days. Subject areas will include:

- Share plan regulation – MifidII and GDPR - How are they bedding in?
- Corporate case histories about latest developments in employee equity plans

WHITE & CASE

- Executive equity remuneration: Has the tide turned? Are LTIPs doomed?
- Likely impacts of **Brexit** on international employee equity plans
- Employee communications in share plans - overcoming cultural differences
- Business succession in European privately owned companies
- Increasing Eso take-up in global companies
- Benchmarking international share plans - getting value for money

Centre chairman **Malcolm Hurlston** will open the summit on **Thursday** at 1040 am *(to allow travel time from Gare du Nord for delegates arriving in Paris by Eurostar on Thursday morning. The 0701 from St Pancras fare on June 21 was only £89 as this issue went to press.*

Linklaters offers a buffet lunch on Thursday and will host the drinks reception, with prominent invited guests, after the day's talks which end at 1740. Later, informal dining groups will head off to restaurants of their choice. Our Friday morning session starts at 0915 and ends at 1310. To register for this event, email global@esopcentre.com or Fred Hackworth at fhackworth@esopcentre.com without delay.

Information about hotels in Paris 8 is available.

Delegate fees*: Centre member practitioners **£395**; Non-member practitioners **£615**; Trustee members **£320**; Plan issuer delegates FREE, subject to a £10 admin fee. The fee is a single payment, covering your attendance on both days. *VAT is not charged as this event takes place outside the UK.*

An informal dinner where delegates can meet and make friends is planned in the Paris restaurant *La Fermette Marbeuf* on **Wednesday** evening (June 20), rendez-vous 2040. If you'd like to join us, please notify Fred Hackworth.

newspad's Paris summit programme brochure is logo co-sponsored by Centre trustee member **ZEDRA,** an independent, global specialist in trust, corporate, employer solutions and fund services which are based in 14 key jurisdictions in Europe, Asia, Oceania and the Americas. The **Zedra Employer Solutions** team, established more than 20 years ago, provides specialist trustee and administration services to a wide variety of employee share ownership plans. Its clients include FTSE 100, 250 and internationally listed companies, as well as private companies and private equity-backed companies. The team is valued by Zedra's clients and its advisers for its extensive legal and tax compliance expertise as well as its ability to handle complex transactional company life cycle events. Zedra's motto is "We believe in doing more, so that our clients can." **Elaine Graham** is a director and head of employer solutions at Zedra Guernsey. *Her direct line is: +44 (0)1481 881409 and e-address is elaine.graham@zedra.com. The office address is PO Box 341, Third Floor Cambridge House, Le Truchot, St. Peter Port, Guernsey, GY1 3UW.*

Share schemes for trustees: Jersey, May 2

Now is your very last chance to register for the Centre's next joint employee share schemes conference for trustees, which will be held at the Pomme d'Or Hotel in **Jersey** on **Wednesday May 2**.

This event is being held in association with the Jersey branch of **STEP,** the **Society for Trust & Estate Practitioners,** offering an industry leading networking and learning opportunity for 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** & **Rosemary Marr, STEP:** *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 courts/tribunal cases of note*
- **Graham Muir, CMS:** *GDPR*
- **Stephen Woodhouse, Pett Franklin:** *Employee trusts: challenges and opportunities for trustees*
- **David Craddock, David Craddock Consultancy Services:** *Vix and you - share schemes in an era of volatility*

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

To book your place, email: events@esopcentre.com.

MOVERS AND SHAKERS

***Ian Cox** won promotion to his new post as md of **Equiniti Premier** executive & discretionary plans. He moves up from relationship director at Equiniti.

***Louise Jenkins,** formerly md of **FTI Consulting's** European tax advisory practice, has moved to **Alvarez & Marsal Taxand UK,** as senior director. Her direct line is: +44 (0)20 7070 0643 and her mobile number is: +44 (0)7583 935454. Her e-address is: louise.jenkins@alvarezandmarsal.com

*Trustee member **Estera** has been short-listed as '*Trust Company of the Year - Large*' in the

Linklaters

Citywealth Magic Circle Awards 2018. Ceo **Farah Ballands** said: “We are delighted to receive recognition for our recent achievements including our acquisitions of Morgan Sharpe and Heritage in Guernsey, as well as Headstart in Luxembourg and the expansion of our Trust business.

*Centre member **Global Shares** won the ‘*FinTech Company of the Year Award*‘ at the **Deloitte** *Fast 50 Awards*, now in their 18th year, which rank Ireland’s fastest growing technology companies and are recognised as a barometer of a company’s success, providing it with a respected badge of honour. The award included a five-day sponsored visit to Silicon Valley. Deloitte partnered Silicon Valley Bank in the new ‘FinTech Award’ category to recognise and showcase companies who are influencing this space with their technology and innovation.

UK CORNER

July 6 deadline for ERS online reporting service

Companies who operate share or share option plans for employees or directors must report all their transactions during the past financial year to HMRC by the **July 6** deadline. All reporting returns for the tax year ended April 5 2018, including new schemes, must be done through the **HMRC Employment Related Securities (ERS)** online service, available for companies to register. It forms part of the *PAYE for Employers* online service.

Late filing penalties will automatically apply for non-compliance and approved share schemes (such as EMI) may lose any eligible tax advantages if they have not been registered online by July 6. HMRC estimates that ***25,000*** employee share schemes were registered through the ERS online service in the previous fiscal year ended April 5 2017. HMRC raked in more than **£2m** in the 2016-7 fiscal year from its automatic penalties for late filings, which start at £100, though some of this has been clawed back via HMRC’s appeals process. A further **2,700** *third* penalty notices for larger amounts have been served regarding filings yet to be made from last year.

HMRC does not issue reminders to companies to file annual returns, as this is the responsibility of employers. Once the scheme is registered it can take up to ten days for companies to be allocated a unique scheme reference number, which must be checked in ‘*view schemes and arrangements*.’ This only works once a scheme has been registered and allocated the unique scheme reference number.

Any share transactions involving employees will need to be reported online on an ERS return, including: Shares, options or securities issued to or acquired by employees or directors; Options that have been granted, exercised or cancelled; Companies and LLPs who are part of international groups must collect data regarding which of their employees have received shares in *other* group companies, including overseas.

For HMRC approved schemes, there is a *self-certification* process under which all EMI, CSOPs,

SIPs and SAYEs must submit a declaration to HMRC that the criteria for qualification have been met. Self-certification only needs to be done once, so only new schemes which were launched in 2017/18 need to be completed by July 6. Failure to register the scheme within the ERS online service could mean the tax benefits of the approved scheme will be lost. So registering sooner rather than later is advisable, to ensure any technical issues can be resolved without filing delays.

MPs to review HMRC conduct in the Roadchef Esop compensation battle

A parliamentary inquiry into the conduct of HMRC is to consider evidence about the tax treatment of the former members of the Roadchef Esop, who still await payment of their court-ordered compensation, almost 20 years after their employee shares were sold without their knowledge.

A Treasury sub-committee will probe HMRC’s conduct of tax enquiries and its resolution of tax disputes in general, but the Roadchef employees’ fight for compensation will be examined, at the instigation of **Neil Gray**, MP for Airdrie & Shotts, who is SNP spokesperson for social justice. He brought up the Roadchef compensation case during prime minister’s questions in the **House of Commons** just days ago. **Mrs May** told him that HMRC was working closely with the trustee and that there would be a meeting between them shortly.

Mr Gray told her: “About 20 of my constituents, most of whom are living around Harthill, and 4,000 other low-paid workers around the UK are waiting for money that is rightfully theirs. They have been waiting for 20 years. Some will have died waiting, and others are now seriously ill. Mr Speaker, you represent, as do others across this House, constituents who are waiting for their payout from the Roadchef employee benefit trust, which has been trying to get HMRC to take a decision on £10m wrongly paid to it 18 years ago. Will the prime minister join me today in calling on HMRC to finally decide on this case and get the money back to the people who rightly deserve it?

Mrs May replied; “I understand that (Mr Gray) raised this case with the chancellor of the exchequer last week. The financial secretary has offered to meet Mr Gray to discuss the wider issue. HMRC is working closely with the trustees’ representatives to resolve the case and will be meeting them next month. HMRC is operationally independent, and that is important. It

must of course apply the law fairly and collect the taxes set out in legislation by parliament, but it is working with the trustees' representatives, and as I said, the financial secretary is happy to meet him to discuss this."

HMRC, in its code of governance for resolving tax disputes, outlines internal governance processes that are intended to ensure that it deals with all tax disputes fairly and in an even-handed manner. The Treasury sub-committee will examine *whether HMRC's approach to conducting tax enquiries, resolving tax disputes and determining the amount of tax to be paid, meets those standards.*

Roadchef Employee Benefit Trustees Ltd (REBTL) and HMRC remain deadlocked over the key question of whether most of the **£10m** paid in tax by former Roadchef ceo and chairman, Tim Ingram-Hill on his gains, when he sold the Roadchef shares to Nikko, should now be paid to the Esop participants *on top of their share of the compensation pot.*

REBTL director Christopher Winston Smith told hundreds of former Roadchef employee shareholders that HMRC had agreed last autumn to a tax-free distribution of the compensation pot, **provided** that the trustee abandoned its claim for restitution of a large slice of the tax paid. This, the trustee has refused to do, arguing that it was "*legally and morally wrong for HMRC to benefit from money wrongly received from a third party and which was not tax. This is the Trust's money."*

HMRC has dug in its heels and – to date - has refused to budge. It maintains silence about the case by claiming that it cannot comment because it concerns the tax affairs of individuals.

Outraged beneficiaries are now saying that 'enough is enough'- they are demanding an immediate distribution of their compensation. Among them, this comment to the Centre from former Roadchef employee Stanley Serunkuma is typical. He said: ***"It's disappointing that there seems not to be any upper level authority to bring this to a close?! (courts, parliament etc). It begs us to ask which country are we living in? How long is this going to carry on?***

It was in January 2014 that Mrs Justice Proudman (now retired) ruled in the High Court that what Ingram Hill had made from the sale of employees' shares to **Nikko** in 1998 had to be paid back, **net of tax,** to the trust for distribution to its beneficiaries. She said that the proceeds from the shares sold had been held in constructive trust by the chairman for the beneficiaries.

In court, the trustee had queried the 1998 transfer of shares in Roadchef between two trusts, EBT1 and EBT2. The original EBT – called EBT 1 - operated an employee share ownership plan for the benefit of all qualifying Roadchef employees, while EBT2 was used to provide share incentives to senior management. Evidence was heard about the circumstances in which the then senior management trustees granted options over the shares to Ingram Hill personally.

Centre practitioners who deal with commercial tax may wish to send written submissions to the sub-committee regarding any of the following questions:

- How do HMRC governance and settlement processes affect its ability to resolve tax disputes in a proportionate and fair way?
- Does HMRC's litigation and settlement strategy provide a rational and sound framework for resolving tax disputes?
- Do HMRC's collection and management powers set out in the Commissioners for Revenue and Customs Act 2005 provide HMRC with sufficient flexibility to achieve cost-effective and fair results?
- Does HMRC's approach to enforcing compliance with tax law, including its approach to penalties and other sanctions, result in disproportionate or unjust outcomes? If so, how can the situation be remedied?
- Is there sufficient governance over the whole of HMRC's enquiry process to ensure that HMRC's interventions are well-targeted and that taxpayers are treated fairly and professionally throughout?
- Do HMRC's governance processes provide sufficient scrutiny and assurance for clearances and approvals given to taxpayers outside the formal enquiry process.

The deadline for written submissions to the Treasury sub-committee is **May 31**.

Parliamentary early day motion (EDM) 200 urging HMRC to resolve the tax issues so that the Roadchef ex Esop participants can be paid their compensation has been signed recently by **Frank Field,** MP for **Birkenhead,** who now chairs the House of Commons work and pensions committee. The motion has been signed by 16 MPs from all parties to date. One of Parliament's most prominent members, Frank Field will not let matters lie.

The High Court's ruling that the term '*beneficiary*' – poorly defined in the Roadchef trust deed - in this case meant those who would receive compensation when it was eventually paid, which includes at least 3,000 other Roadchef employees who work or have worked for the company post its sale **and** *several hundred original Roadchef employees who did* ***not*** *participate in the Esop and who therefore lost nothing*. After many months of negotiation, the court backed a final compensation scheme which will give **61** percent of the compensation to the Esop participants, nine percent to those 'original' employees who did not participate in the Esop, or who didn't qualify for inclusion, and the remaining 30 percent of the pot to more recent Roadchef employees.

The penny hasn't dropped

Many participants don't understand the finer points of tax-approved all-employee plans, which is not in itself surprising but interesting light is shed in a survey supported by Centre member **YBS Share Plans.** Younger employees nowadays – the so-called *Millennial Generation* – are less likely to join their

employer's share schemes than their older colleagues, the data revealed. This tendency could pose a threat to the long-term future of Eso in the UK, warned **Martin Nellist** at YBS**.** He said: "Despite all-employee plans' convenience as a savings vehicle and their potential to generate significant financial gains for participants, we typically see significantly lower take-up of all-employee plans by Millennials compared to their colleagues in older generational cohorts. It could be argued that failure to engage the rapidly growing Millennials population with share plans will have existential consequences for the share plans industry. The greater the number of non-participating Millennials ascending to decision-making roles within the corporate world, the less likely they will be to operate Esops in the companies that they run, not having known or personally experienced the benefits that these plans offer". It would be interesting to see to what extent this was always true of employees in that age range.

Another finding was that among the SAYE scheme participants, only 38 percent said a reason for participation was that they wanted to *own* company shares (*though of these, almost half the men – 46 percent – said they wanted to own the shares, compared to only 26 percent of female participants*). By contrast, 80 percent said participation was a convenient way to save, and 75 percent said they wanted to profit from the shares.

The pattern was similar for SIP participation; a lower proportion of female respondents cited *ownership* of shares as a key driver for their involvement (39 percent) compared to male respondents (57 percent). Men mentioned the value of the SIP Plan's tax advantages as a key reason for participating, to a far greater degree than female respondents, at 68 percent and 28 percent respectively. Similar preferences were exhibited for matching shares as a reason to join, too.

In the SIP non-participant cohort, 40 percent of women characterised shares as being too risky to invest in, compared to 26 percent of male respondents. The survey results suggested that 25 percent of participants in SIP were unaware of deductions being taken from pre-tax pay. Almost 1,700 employees responded to the survey questionnaires in 11 UK companies: 1,210 respondents were participating in their company's SAYE and/or SIP; 489 were not.

"We have a duty to make sure share plans remain as relevant and valued by today's workforce as they were in the past," said Mr Nellist**.** "We have evidence to suggest clear differences in awareness, understanding and attitudes toward all-employee share plans across the employee demographic. Amongst current participants there is a worrying knowledge gap around key plan features: *25 percent confirmed they weren't aware contributions to a SIP were taken from pre-tax pay; *non-participants said they don't join because they don't understand the plan (25 percent of respondents) or they weren't aware of the plan in the first place (17 percent of respondents).

"There is maybe a lack of understanding amongst both non-participants and participants of the role that pre-tax deductions play in partially cushioning participants' investments from share price volatility. An alternative reading might be that the tax benefits are understood but not attractive enough to convince risk-averse individuals to join the plan. Given that these respondents already participate in SIP, we should be concerned that key features of the plan are not better understood.

"SIP is a more complex plan than SAYE in many ways and there are significant improvements still to be made in communicating the key features simply to the entire eligible employee population, including those who do join up. Communicating enough so that employees join is one challenge, communicating enough to ensure that employees fully understand the plan while they're actively participating is another challenge. Change can help secure the future of all-employee share plans in the modern workplace, but if we ignore the differing priorities and motivations of the various generations we run the risk of Millennials being disengaged with share plans forever," added Mr Nellist.

Louise Drake, national sales manager at YBS Share Plans said: "There is some interesting insight from our research particularly around the flexibility of savings limits that link to keeping employees engaged in the plan. We must remember that although Sharesave is an easy and simple product, other than the increase to the savings limit, there has been no material change to a plan that was designed in the mid 70s before its launch in 1980."

*For 35 percent of participants, SAYE was their only current flow of savings *65 percent said they would have spent their contribution money if they weren't in an SAYE. *Almost 30 percent said that their families were their main source of financial advice *More than seven in every ten employees experience at least one major unexpected cost burden per year *Millions of employees rely on debt just to get by.

Workplace pension contributions rise

Millions of workers saw a dip in their post deduction incomes last month, as the amount they had to pay into their pensions tripled. From the start of the new tax year, workers in auto-enrolment pensions saw their minimum contributions rise from one percent of their

income to *three percent*. From April next year, the rates will rise again – to *five percent* from the employee and three percent from the employer. Someone earning an average salary of £27,000 will have to pay an extra £350 or so this year. However, after contribution rates rise next April, the pension cash deduction from average wages/salary will be an extra £700 a year.

Announcements under the MAR, Disclosure, Guidance & Transparency Rules

***A.G.Barr** announced that four of its directors had each purchased 22 company ords at £6.70 per share and, in consequence, had been given 11 matching free shares each under the terms of the company's tax-approved Share Incentive Plan.

***Capital Drilling** Ltd, a company focused on emerging and developing markets, announced that it had issued 419,982 new common shares under the terms of its employee share schemes. Andrew Koekemoer, cfo, was granted 31,941 new shares; Jodie Raymond North, general manager, production, 97,201 new shares; David Regan Payne, general manager - commercial, 36,053 new shares; Graham John Almond, general manager – support, 26,564 new shares and Anthony Charles Woolfe, general manager of Assets received 24,876 new shares. In addition, Capital Drilling announced that it had issued 145,455 new shares to Jamie Boyton, executive chairman, at a price of 55p per share under the group's discretionary bonus scheme. This delivered a previously approved award under the 2017 bonus scheme, with a share price value date fixed at March 31 2017. Following these transactions, the company's issued share capital comprised 136m shares of $0.0001 each.

***Coca-Cola European Partners** issued and allotted 458,893 new ords, with a nominal value of €0.01 each under two employee share schemes: the Coca-Cola Enterprises 2010 Incentive Award Plan and the Coca-Cola Enterprises, Legacy Long-Term Incentive Plan (LTIP). The **Financial Conduct Authority** authorised listing of the shares on Euronext, London.

***CVS,** an integrated veterinary services company, announced that 5,168 ords of a nominal 0.2 pence each were issued on April 5 as a result of the exercise of employee share options, in connection with the company's December 2014 - December 2017 SAYE Eso scheme.

*AIM-listed **Earthport**, a cross-border payment service, announced that, using its Long Term Incentive Plan (LTIP), under which participants may be granted nil cost options or restricted stock units (RSU), sourced using newly issued shares, and its Joint Share Ownership Plan, the company had allotted 10.3m new ords to the trustees of Earthport's Eso plan. These shares will be used to satisfy exercises of already granted awards or future awards, including the awards made on November 22 2017 and further in the past to directors and other employees. In addition, Earthport allotted 309,944 new ords of ten pence each in lieu of fees to a third party adviser. The company's enlarged issued share capital comprises 623.5m ords with one voting right per share. No shares are held in treasury. Earthport granted options over one million ords at nil cost to Phil Hickman (interim ceo) as part of his remuneration for his new role. These options will vest on December 31 this year. Earthport announced too that Hank Uberoi was entitled to 1.6m ords in the capital as a result of the vesting of previously granted restricted stock units, which were part of his remuneration as ceo for the period January 1 2016 to December 31 2017. Accordingly, 928,000 ords were transferred to him free of charge on April 11 by the trustee of the company's EBT and the balance of the ords will be retained by the trustee for settlement of tax withholding obligations. Mr Uberoi's aggregate holding in Earthport is now almost 28m ords, representing 4.55 percent of the issued share capital.

***easyJet** announced that awards of up to £3,000 worth of ords of a nominal 27 pence each in the airline were made, as part of a programme of awards, to eligible employees under the *Performance (Free) Shares* element of easyJet's HMRC approved all-employee Share Incentive Plan (SIP). The Company was notified on April 9 by **Equiniti Share Plan Trustees,** as the trustee of the SIP, that five people discharging managerial responsibility were each awarded options over 182 shares at a price of £16.41 per share.

***Merlin Entertainments** announced that seven *Persons Discharging Managerial Responsibility* (PDMRs) were granted options to purchase ords of a nominal £0.01 each under the company's UK Sharesave plan at an exercise price per share of £2.83. The number of options granted to each executive varied between 317 and 6,358. In addition, Hans Pedersen, md of LEGOLAND Parks, was granted options over 2,546 shares under the firm's US employee stock purchase plan, at an exercise price of £2.97 per share. The options issued under the UK Sharesave scheme will not normally vest until the completion of a three year savings period, ending May 1 2021, to be exercised within six months thereafter. The options issued under the US employee stock purchase plan are not exercisable until the completion of a two-year savings period, which will end on May 1 2020, at which point they will vest automatically.

EMPLOYEE OWNERSHIP NEWS

A west country agricultural entrepreneur is a recent backer of the employee ownership concept, which is now embraced by more than 300 British companies, reported *The Guardian.* Guy Singh-Watson is handing 76 percent of his **Riverford Organic Farmers** business to its 650 employees via an employee benefit trust as part of plans to create a structure where the staff will have a say in the firm's future.

Singh-Watson started Riverford, an organic vegetable box service, by growing produce in a Devonshire field he rented from his brother. He now presides over a business that has a £60m turnover and distributes nearly 50,000 boxes of produce a week and says he wants to protect the Riverford brand from venture capitalist investors who do not understand the business. "I'm on a mission to show that a better way of doing business is commercially possible – and desirable," said Singh-Watson as he strode around a broccoli field: "*I don't think you get most of what staff can offer by motivating them just with money. All the research tells us that's rubbish. With a lot of planning and work, we can achieve a lot more.*"

Staff will not have to buy shares under its Eso plan; their 76 percent stake will be held in a trust overseen by a board which will help run Riverford, together with a staff council. Employees will share about ten percent of annual profits, as they have since the 1990s, and a loan from ethical bank **Triodos** will let the business pay £6m over four years to Singh-Watson, now 58. The business is worth more than £20m and Singh-Watson could have obtained much more money if he had accepted an offer from City types seeking a slice of the fast-growing food delivery market. Such investors are helping fuel the rise of schemes such as *Farmdrop* and *Hello Fresh*. Singh-Watson set up Riverford in 1986 as experiment in growing organic vegetables on the family farm. He sold to supermarkets at first, then in 1993 started to deliver the produce to about 30 friends. Today, the business has moved from the original family site to five farms – in Devon, Cambridgeshire, Hampshire, North Yorkshire and France. It delivers about 50,000 veg boxes a week, supplied by its own farms and a network of about 40 others. It has a fledgling recipe box service too – with ingredients delivered ready to prepare a meal – a restaurant at its headquarters in Buckfastleigh, Devon, and a gastro-pub in London.

Singh-Watson first thought about handing ownership to staff more than a decade ago, but sales of organic vegetables were hit after the financial crash, just as the company was beset by problems with its website. The plan was put on hold as Riverford got to grips with being "an internet retailer, not a bunch of straw-chewing farmers". He has had no problem resisting the lure of a big cheque: *"What would I do with it? Would it make me happier? I'm pretty confident it wouldn't, and it would leave the company with a lot of debt."* He plans to invest his payout from the deal in a compost-making business and to pay off the mortgage on a new farm where he wants to experiment with perma-culture and forest-garden agriculture. Singh-Watson vowed that he would not be handing over the cash as an inheritance – a decision with which he insists his children agree. *He is keen to preserve the legacy of a business that puts fair treatment of staff and suppliers at its heart.* Unlike many supermarkets, Riverford cuts long-term deals with farmers and works with them to get as much of the crop as possible onto shoppers' plates. "*This is my mausoleum, my folly on the hill. It's what I was put on the planet for*," Singh-Watson said. Other UK firms who have moved to employee ownership vary in type from **Arup** architects to the **Sawday**'s holiday guides group and ethical beauty brand **Lush**.

Second edition of the CRS handbook released

The **Organisation for Economic Cooperation & Development (OECD)** released the second edition of the **Common Reporting Standard (*CRS) Implementation Handbook,*** containing an extensive section (chapter six) on the treatment of trusts, which should provide much needed guidance for practitioners where answers were previously lacking, reported **Bedell Cristin**. The key difference from the first edition is that the updated handbook contains additional guidance to assist with the identification of *Controlling Persons* in a chain of ownership. In particular, the second edition:

- provides clarity on when and how *Controlling Persons* should be identified where there is a chain of ownership
- clarifies the approach needed to be taken on the 25 percent threshold outlined in the 2012 FATF Recommendations
- details how entity accounts should be treated and the need to identify *Controlling Persons* in respect of both a Reporting Financial Institution and a passive NFFE
- contains useful flow chart style examples to help illustrate how *Controlling Persons* can be identified
- clarifies that in the case of an account closure, the fact of closure and any gross payment made or credited until the date of account closure must be reported.

WORLD NEWSPAD

Huge pay ratio gaps in the US

A top US ceo earns almost 5,000 times more than an average shop floor employee in her company, it was revealed. A new **Securities and Exchange Commission rule** mandated under the 2010 Dodd-Frank financial reform requires publicly traded companies to disclose how their ceos are compensated compared to their employees. In public filings, companies have to disclose their pay ratios, or the ceo's compensation divided by the median employee's. **Margo Georgiadis**, ceo of toymaker Mattel — the company behind Barbie, Hot Wheels, and Fisher-Price — **earns 4,987 times more than the company's median employee**, or, when accounting for a one-time sign-on bonus, 1,527 times more. Georgiadis earned $31.3m in 2017, her first year on the job, while the median Mattel employee, globally, earned $6,271. (Seventy-eight percent of Mattel's total workforce is located outside the US, where pay standards are lower.) **Greg Creed**, the ceo of **Yum Brands**, which owns **KFC, Pizza Hut**, and **Taco Bell,**

made 1,358 times more than the median employee. His 2017 total compensation was $12.4m while the median employee's pay, including full-time and part-time workers was $9,111. Mattel and Yum did not return requests for comment, said the bulletin *Vox*. As per a **Bloomberg** tracker of pay ratios, the ceo of **VF Corporation** — which owns clothing brands such as Lee, the North Face, Timberland, and Vans — pays its ceo 1,353 times more than the median employee. The ceo of **Kohl**'s makes 1,264 times more than its workers. The ceo pay ratio of the cigarette company **Philip Morris** is 990 to 1; at the oil refiner **Marathon Petroleum**, it's 935 to 1.

UK bankers' reward still dominant within the EU

More than three-quarters of the highest-paid people in banking and asset management in Europe worked in the UK in 2016 even after a big move in exchange rates saw the number of high earners in London drop. Statistics released by the **European Banking Authority (EBA)** showed 4,597 people in the industry earned **€1m or more** in Europe, down 11 percent from 2015. The highest earner was paid €33.2m. He or she worked in asset management in the UK. The highest-paid person in a management function in 2016 received €25.3m and the highest-paid investment banker got €18m. Another 14 investment bankers and nine managers in the UK were each paid more than €10m. The longer-term trend for pay is upwards, however: there were 1,170 more people earning over €1m in 2016 than in 2010, representing a 34 percent rise over six years, despite efforts by politicians and regulators to curb pay. Some 77 percent of the 2016 high earners, or **3,529** people, were in the UK, showing the dominance of London as Europe's financial centre. The UK tally of €1m a year + bankers was down 15 percent from 2015, but it was still 14 times the next highest country - Germany - where there were 253 high earners, down nine percent from 2015. The number of high earners in Spain jumped 21 percent from 2015 to 152 and in France there were 205 high earners in 2016, up 15 percent on the year. Italy was the fifth country to have more than 100 high earners with 172, down one percent. The EBA is moving its 200 jobs to Paris before March 31 next year, due to Brexit.

*Firms and funds benefiting from an EU passport need not apply for authorisation at this stage, said the **Financial Conduct Authority**. This is in light of the agreement on the terms of an implementation period and the Government's commitment to providing for a *Temporary Permission Regime* as a backstop.

*The European Commission issued a notice to stakeholders to remind them that they need to prepare for the potential legal repercussions of Brexit on **European Works Council (EWC)** arrangements; stressing that without any agreement to the contrary the European Works Council Directive will cease to apply to the UK. This would create issues including: whether an undertaking comes within the scope of member state EWC legislation if UK employees are no longer taken into account when assessing whether the threshold of 1000 employees has been attained, and, where central management of the undertaking was previously located in the UK who will become the central management's representative. The precise impact of Brexit on EWC arrangements will be dictated by a number of matters including whether the EWC agreement is a voluntary arrangement or one resulting from the formal legislative process being triggered and, of course, what the final Brexit agreement looks like, said Centre member **Clifford Chance** in its latest employment briefing. Companies that currently operate EWC arrangements need to consider the potential ramifications of the following:

- Is the EWC agreement a voluntary arrangement or one that has evolved out of the legislative process being triggered?
- Is central management currently based in the UK? If so, in which EU country would the central management's representative agent be located post Brexit?
- Is the EWC agreement governed by English law? Would the EWC threshold employee numbers be achieved if the UK workforce is excluded?
- Does the EWC agreement have any 'adaptation' provisions allowing for amendment of the EWC agreement and EWC composition in the event of corporate structural/other change?
- Is the (non UK) European workforce likely to have an appetite to trigger a new EWC negotiation process post Brexit? See: https://ec.europa.eu/info/sites/info/files/notice_to_stakeholders_brexit_work

COMPANIES

***Ireland:** A €1bn tracker mortgage scandal put paid to **AIB**'s plans for a new executive remuneration scheme, which would have included share bonuses for 80+ management staff. Finance minister Paschal Donohoe decided, on behalf of the Irish state, which owns 71 percent of the bank, to shoot the bonus plan down in flames. He said only months ago that bank customers in general had been treated "disgracefully" and that the past and current culture of the banks was "unacceptable" to him. AIB's bonus plan was relatively modest: those participating would only be able to have shares awarded to them after 2019 and a portion would be held back in the event that the bank's performance was negatively affected afterwards. The shares could only pay out to executives once all the €20bn put into AIB by the State had been paid back. The scheme as proposed would not have seen executives receive real shares in their hands, until about five years from now. Unlike **Bank of Ireland**, AIB's ceo has been limited by the Government salary cap that restricts bankers' annual salary to €500,000, meaning Bernard Byrne's total compensation could rise to €1m. As is the case with nationalised AIB and Permanent TSB, executives at Bank of Ireland have

not received a bonus payment since 2008. However, as the banks return to profitability and restart dividend payments, the pressure to ease the ban on bonuses is likely to intensify. Bank of Ireland too intends to canvass shareholder support for a return to executive bonuses in 2019 in an effort to cast off pay constraints imposed during the 2007-8 financial crash. The group's decision to engage with investors about an "appropriate executive incentive scheme" was highlighted in a report by one of the world's biggest advisers on voting at shareholder meetings, **Institutional Shareholder Services (ISS).**

*__Bob Mackenzie,__ the ex-**AA** chairman sacked from his £1.2m-a-year job after being accused of assaulting a colleague, is suing his former employer in the High Court for £220m. In addition, he was stripped of a pending payout in share options, worth up to £68m, because he was classified by the AA a '*bad leaver.*' Unless departing employees are classed as *good leavers* – i.e. they were forced to leave the company as a result of serious illness or a severe family crisis – they usually are made to forfeit their accrued employee share or share option rights. The AA is expected to counter-sue and demand repayment of £1.2m in bonuses paid to Mr Mackenzie before his sacking – for alleged gross misconduct.

*__BP__ ceo Bob Dudley got a $1.8m reward increase last year, receiving $13.4m in total after one of the best years in BP's recent history. Dudley got a 14 percent rise after the energy giant's profits rose to $6.2bn last year, up from $2.6bn the previous year, as crude oil prices rose to their highest level since 2013. The company paid $7.9bn in dividends to shareholders after boosting production by ten percent. BP's performance committee applied a more demanding new policy about operational and financial performance to the shares he had been awarded three years ago under the old policy. The new policy had meant a cut in his total reward from $17.6m to $13.4m.

*A Swiss investor adviser said **Credit Suisse Group** shareholders should vote against the bank's 2017 compensation plan, following uproar over its reward proposals last year. **Ethos,** which advises Swiss pension funds, said investors shouldn't support the re-election of chairman Urs Rohner because remuneration changes were being driven by management rather than the board. **zRating**, another Swiss shareholder group, is similarly recommending a vote against the compensation report at the April 27 agm, *Finanz und Wirtschaft* reported. Even though "changes in the remuneration system go in the right direction, the level of variable remuneration remains too high in light of the bank's further losses," Ethos ceo Vincent Kaufmann said in an email. "Credit Suisse needs a new chairman to fully restore the confidence of shareholders." Ethos's stance contrasts with that of ISS and **Glass Lewis**, which both said that investors should support Credit Suisse's pay proposals. The Zurich-based lender overhauled compensation formulas, including placing greater importance on cost reductions, after the executive board last year waived 40 percent of bonuses to dampen investor anger over pay levels. "The Ethos report is out of touch with the widespread support we have received for our compensation report and other corporate governance matters," said the bank. For 2017, the Swiss bank's management board is getting $72.7m, 4.3 percent less than in 2016. Ceo Tidjane Thiam is taking a slightly bigger pay cut of five percent. However, the bank's overall 2017 bonus pool is three percent higher than 2016. Ethos welcomed the "improved transparency" of Credit Suisse's remuneration plan for 2017, Kaufmann added.

*__Deutsche Bank__ faced a €7m bill for removing John Cryan as ceo less than three years into his five-year term, said the *Financial Times*. Germany's biggest lender ousted him, with its chairman, Paul Achleitner, saying his bank needed a "new execution dynamic" in its leadership. **Christian Sewing**, who most recently ran Deutsche's retail bank, was appointed ceo. Less than a fortnight earlier, Mr Cryan had assured his 98,000 staff that he was "absolutely committed" to staying on and that there was no difference of opinion between his management team and the bank's supervisory board, chaired by Mr Achleitner. The defenestration of Cryan came only weeks after he had signed off massive bonuses for staff – which more than quadrupled to a collective ***€2.2bn*** (£1.9bn) - despite Deutsche Bank having racked up its third consecutive loss in 2017. Its 12-strong management board, including Cryan, waived their bonuses for 2017. But their collective total pay still rose 13 percent to €29.2m.

The German lender, which employs more than 8,000 people in the UK, posted a larger after tax loss than it had previously disclosed, at €735m. It had said in February it had lost €497m. The bank's annual report shows that Mr Cryan and any member of Deutsche's management board is entitled to "*a severance payment upon early termination of their appointment at the bank's initiative*" as long as the bank does not terminate "for cause". The severance payment is two annual compensation amounts and is limited to the claims to compensation for the remaining term of the contract," the annual report continues. The payment is based on the executive's most recent year's remuneration and their expected pay in the coming year. Mr Cryan's total reward for 2017 was €3.4m, implying a pay-off figure of around €7m depending on the treatment of pension contributions and fringe benefits.

*Senior executives at **Dignity** waived £1.7m in bonuses after the funeral provider cut its profit forecasts. Four directors, including ceo Mike McCollum, voluntarily gave up the payouts because of reduced profit expectations this year. The company's profit performance last year was sufficient for bonuses of 95 percent of the maximum possible to be triggered. However, Dignity, which conducts 68,000 funerals per year, tempered its outlook after scaling back prices amid an industry price war at the start of the year.

***Man Group** began its share repurchase programme, confirming it was intending to buy back up to $100m of its own stock for future employee incentives or cancellation. The FTSE 250 firm said its policy was to distribute available capital surpluses to shareholders over time, by way of higher dividend payments and share repurchases, while maintaining a prudent balance sheet after taking into account required capital and potential strategic opportunities. The repurchase programme would run until April 30 2019, it said. *"The purpose of the programme is to reduce the share capital of the company - any shares repurchased for this purpose will be cancelled - and to enable the company to meet obligations arising from employee share option programmes, or other allocations of shares to employees of the company or to members of the administrative, management or supervisory bodies of the company or an associate of the company - any shares repurchased for this purpose will be held in treasury,"* the board explained. Around 37.5m shares will be acquired, based on the prevailing share price and sterling-to-dollar exchange rate as at the date immediately prior to the announcement.

*The employee owners of **Moretrench,** which operates mainly along the US east coast, have made US$90m (£64m) after selling their company to **Keller** in a transaction first announced in January. Moretrench's revenue in the year ended December 31 was $168.3m; its earnings before interest, taxes, depreciation and amortisation (EBITDA) were $15.8m, excluding $2.8m of charges relating directly to the employee share ownership plan and the transaction. Keller said that now it would be very well positioned for the expected long term renewal of infrastructure in the region. Keller and Moretrench have been partners on a number of project joint ventures, which gave confidence in the mutual compatibility of culture and management approaches.

*The *Big Four* consultancies' quarterly *IPO Eye* survey of initial public offerings revealed a big year-on-year fall in company flotations on the LSE market during the first quarter of 2018. Between January 1 and March 31, there were just 16 flotations in London – nine on the main market, raising a total of £1.15bn and seven on Aim, realising £149m more. This represented a 38 percent drop in the number of IPOs compared to the same period a year ago, but the total raised by the deals was up by six percent.

*House-builder **Persimmon's** shareholders revolted against the "grossly excessive" and "totally unjustifiable" £75m bonus handed to its ceo, Jeff Fairburn. They took to their feet at Persimmon's agm in York to express their outrage at the vast sums awarded to Fairburn and other senior managers. Despite investor anger, Persimmon's pay policy squeaked through intact because almost a third of shareholders abstained and of those who voted, **51.5** percent were in favour, while 48.5 percent were against. Almost two-thirds of shareholders failed to support the huge payout on an uncapped LTIP and only 36 percent voted in favour of the housebuilder's renumeration policy. Euan Stirling, the head of stewardship at **Aberdeen Standard Investments,** a major Persimmon shareholder, said the payment of "such excessive amounts" had tarnished the house-builder's brand. Stirling said that Fairburn's offer to reduce his bonus from £100m to £75m, by making a large charitable donation "does not even get close to acceptable."

***Toys R Us** filed for US Chapter 11 bankruptcy last year, with more than $5bn of debt on its books and plans to reorganise. Two months later, the retailer asked a judge for permission to pay its executives $32m in bonuses, which is not unusual for US bankruptcy judges to approve. It happened recently with **Radio Shack** and **Westinghouse Electric**, despite Congress passing a law restricting bankruptcy bonuses a decade ago. Companies said the goal of a Chapter 11 bankruptcy was for a company to shed debts and start again, but it couldn't do that if its executives jumped ship. "When you have a distressed company, the loss of top management can be disastrous," said Lori Vaughan, a US bankruptcy lawyer. "You would lose that institutional knowledge. So it's important to retain those individuals." They did that, they argued, by offering bonuses, said US investment magazine *Marketplace*. The law was tightened to make it harder for companies to award these retention bonuses, but corporate lawyers got through the cracks. "What has happened is they're now reframed," said David Skeel, professor of corporate law at Pennsylvania University. "So instead of paying somebody to stay, which is essentially illegal now, the bonuses have performance metrics in them." Those metrics include things like emerging from bankruptcy quickly or hitting certain sales goals. If a company meets the metrics, executives get a bonus. Courts often approved these plans, Skeel said. They had become the new norm. In December last year, a judge said that Toys R Us could pay its executives up to $21m in bonuses if it met various objectives, like $641m in annual earnings. Toys R Us said it fell short, and so the company never paid the bonuses. Less than a week before Toys R Us filed for bankruptcy, it paid its executives $8m to stay on board. In March, the company announced that it was shutting down entirely. All its UK stores are closing and its last 2,000 employees were made redundant.

***Unilever** faced an agm stand-off with shareholders over executive pay, after two shareholder advisory firms urged investors to reject the consumer goods giant's reward proposals. Unilever is attempting to swap its base salary for a consolidated fixed pay structure, which would mean it could hand larger pay rises and bonuses to its executives. Institutional Shareholder Services recommended that shareholders vote against the binding pay policy at the Anglo-Dutch company, flagging concerns that a proposed overhaul would drive up the potential for big increases in fixed pay and bonuses. Rival proxy adviser Glass Lewis backed the 'simplified pay structure' at the company,

but IVIS, a service run by the **Investment Association**, the asset management trade body, issued a *red-top* warning about the company's non-binding pay report too. The red-top related to the decision by Unilever's remuneration committee to award maximum possible annual bonuses worth €2.3m to ceo Paul Polman and €1.1m to cfo Graeme Pitkethly. The company's remuneration policy is being overhauled this year. IVIS was angered by that decision because Unilever's underlying sales growth for last year missed the target by a small margin. The disquiet over reward came after Polman was granted a 39 percent pay rise for 2017, partly reflecting the boost to its share price after the aborted $143bn bid by Kraft Heinz, the US food group. His total package of €11.7m in 2017 was up from €8.4m the year before, revealed the annual report. Polman would receive up to 23 percent more in bonuses and shares under the new scheme in 2018, taking the amount he could receive up to £9.7m. In addition, he would be given a five percent increase in total fixed pay. Under the new plans, top executives are in line for potentially larger short-term incentives from this year, as Unilever proposed capping long-term incentives at 450 percent of fixed pay, up from 180 percent of salary.

***WPP** faced an investor backlash over the terms of Sir Martin Sorrell's departure which puts him in line for a £20m windfall. Investors told *The Sunday Telegraph* that they were angry the business was allowing the advertising tycoon to pocket up to £20m in share bonus awards over the next five years following an allegation of personal misconduct. Sir Martin has denied any wrongdoing. "We are going to be looking at it all – why he is allowed to leave with such generous terms and the lack of a non-compete agreement," one said. The maximum number of shares Sir Martin may be awarded, if WPP meets certain targets, is 1.65m. Currently, they are worth about £19m. Sir Martin and his family own about two percent of the company - a stake worth c. £300m. Only lawyers on both sides and WPP's 11 member board know the details, leaving the City in the dark about the investigation as its June agm loomed. Sir Martin reacted furiously over the board's handling of the probe. He acted with typical resolve and terminated his contract *at will* – meaning he could leave immediately. Although he was not entitled to a payoff, he is in line for *share awards related to the company's performance between 2014 and 2022*. "Sir Martin would have to await the end of each five-year performance cycle before being awarded any shares," a WPP spokesman said. The board was already being strong-armed by investors to lower Sir Martin's pay following criticism that the amount in previous years was far too high. He was Britain's highest paid ceo, pocketing £70m in 2015 through a share scheme that was later scrapped following a shareholder rebellion. Sir Martin, 73, transformed a tiny wire basket manufacturer (Wire & Plastic Products) he acquired 30 years ago into an international agency giant worth more than £20bn.

***Dead clients on the books**

The **Commonwealth Bank of Australia (CBA)** told a public hearing that some of its financial planners had billed services to deceased clients. In one case, an adviser working for Australia's largest lender collected fees from a former client for more than a decade after his death. Australia is holding a royal commission into the nation's financial institutions. Prime minister Malcolm Turnbull ordered the inquiry last year following a series of scandals involving financial misconduct.

*The **Irish** government has no plans to scrap an 89 percent super tax on bankers' bonuses despite plans by the two pillar banks to introduce new performance-based incentives for top executives from next year. Bank of Ireland told shareholders that it plans to consult them on plans for "an appropriate executive incentive scheme", with bonuses payable in 2019 based on this year's results.

***Tax Cuts & Jobs Act boosts US stock buybacks**

Of the estimated $60.8bn in tax cuts received by US 126 companies from President Donald Trump via the Tax Cuts & Jobs Act, only $6.5bn has gone toward pay rises and one-off employee bonuses (that may not be paid in full). This parsimonious behaviour towards employees has left plenty of tax windfall still to be accounted for. So where have the tax cut gains gone? Not surprisingly, to **stock buybacks**. Through the process of repurchasing their own stock, corporate executives can enrich shareholders and line their pockets - since ceo pay is often linked to increases in the value of the company's shares. The practice, which has overtaken paying dividends as corporate America's favourite way of distributing profit, moved into high gear thanks to the new US tax law. Authorisations for stock buybacks have increased by **$238bn** already since it was passed, with more to come. **JPMorgan Chase** strategists estimated in March that share repurchase totals were on pace to reach a record $800bn in 2018, up from $530bn last year. *Corporations have spent 37 times more on stock buybacks than they've spent on bonuses and wages, according to Americans for Tax Fairness (ATF)—and that is just counting companies whose data is available*. Many trade unions have filed formal information requests to companies that have often kept employees and the public in the dark over their plans for their tax savings, with little success. Ceo reward is on the way up again. According to *Equilar,* ceo reward is now at its highest level since 2007. Many ceos have received hefty pay uplifts and bonuses despite middling performance. The practice of boosting profitability through stock repurchasing has further severed the link between executive performance and executive pay. It has exacerbated economic inequality too. Almost 85 percent of all stock owned by Americans, including pensions plans, IRAs, and 401 (k)s, belong to the wealthiest ten percent of households, according to a research paper published by economist Edward N Wolff. Roughly

half of all households hold no investments in stocks at all.

***Morgan Stanley** ceo James Gorman's overall pay rose 20 percent to $27m last year during a period that saw the firm's net revenues rise ten percent and pre-tax profit margin rise 18 percent. Gorman's total compensation includes a base salary of $1.5m plus cash bonuses of about $5.6m awarded in the early part of 2018, deferred cash and equity awards of $7.2m and a LTIP, based on performance, worth $12.8m. Gorman, 58, has been ceo of the Wall Street bank since 2010.

*The **US City of Birmingham Relief and Retirement System** is suing **Netflix,** alleging that board members "*rigged the compensation process guaranteeing Netflix officers huge cash payments, while misleading investors into believing that these payments were justified by attainment of real performance goals*" and breached their fiduciary responsibilities. The lawsuit claimed that Netflix's chief content officer, Ted Sarandos, will receive a salary of $12m for the current year – more than last year's salary and cash bonus combined. The chief product officer, Greg Peters, will get $6m in salary, more than his combined reward total for 2017. The plaintiff alleged that Netflix rigged the system so it could claim tax deductions and hand out bonuses irrespective "of achieving real accomplishments that serve the company and its shareholders". Netflix converted its executives' cash bonus system into salary under new US tax law - *a change that ensures executives are paid in full regardless of company's performance*.

***New SA Eso plan to exclude whites:**
The trade union **Solidarity** said it would pursue its dispute with the **Commission for Conciliation, Mediation and Arbitration (CCMA)** against **Sasol** for excluding white people from its new empowerment scheme, Khanyisa. The *Ridge Times* reported that Solidarity is prepared to launch strike action if necessary. This came after Sasol announced that its existing Eso scheme, which comes to an end on May 18, would be replaced by *Khanyisa* - to be implemented after the middle of this year. Solidarity's ceo, Mr Dirk Hermann, said that the first scheme, *Inzalo,* followed trends in the mining industry by including all employees. However, in the new scheme, no recognition would be given to white employees, who would be totally excluded from participation. "This employee share ownership deal is unfair and constitutes nothing but blatant discrimination against loyal Sasol employees based on the colour of their skin," Mr Hermann told the media. During the first phase, shares worth R100,000 (£5,843) would be awarded to all former *Inzalo* members. However, phase two would only apply to black employees who would receive shares worth about R500,000. "This means that a white employee who has 30 years' service would, for example, only receive a fifth of the shares compared to what a black employee, who has only been working for Sasol for three days, would receive," Mr Hermann pointed out. In Sasol's formal feedback about *Khanyisa it said that including white people in the employee shareholding scheme* ***would go against the essence of meaningful transformation.*** Mr Hermann riposted: "We believe it is unfair to distinguish between two employees who work shoulder to shoulder. We are convinced that employee shareholding schemes that are more inclusive do exist. For this reason, we have already instructed an expert to formulate an alternative proposal. White employees' frustration has reached boiling point. They feel that their loyal service, as well as the value they add to the company, means nothing. Solidarity will soon initiate a proper mandating process among members regarding further action to be taken about such exclusion based on race," he added.

***Steinhoff** International Holdings shelved a plan to pay director bonuses after senior **South African** MPs questioned whether it was appropriate, given the retailer had lost more than 90 percent of its market value amid an accounting scandal, reported *Bloomberg*. The owner of **Dealz** and **Poundland** retail stores in Ireland and the UK, **Conforama** in France and Mattress Firm in the US had planned to ask shareholders to approve payouts to board members as a reward for their work trying to keep the company afloat. Steinhoff shares plunged last December after the retailer reported accounting irregularities, prompting urgent attempts to shore up the balance sheet and appease lenders. South African legislators urged Steinhoff not to pay the bonuses, in light of the value lost to investors. "It is apparent the motivation behind the proposals for additional one-off payments and for additional meetings has not been fully communicated," Steinhoff said in a statement. "The directors concerned contributed significant time, in some cases on a daily basis for weeks on end up until the present day." Steinhof later said its supervisory board took note of the concerns raised by stakeholders and had decided to delete sections relating to additional payments for independent directors from the resolution on director remuneration. "That the proposal to increase the remuneration of certain independent directors, who seem to have been asleep at the wheel during what may turn out to be the biggest corporate scandal in the history of this country, was made at all, was a spectacular failure of judgment," David Maynier, shadow finance minister, said.

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