Vol 37 No 3 August 2020

it's our business

newspad of the Employee Share Ownership Centre

CGT probe fears over share scheme tax rates

SME users of the popular Enterprise Management Incentive (EMI) and other tax-approved share schemes fear that chancellor Rishi Sunak's decision to order a review of Capital Gains Tax (CGT) rules could lead to bigger tax bills in future years.

The Office of Tax Simplification (OTS) is examining whether lower incentive based CGT rates and exemptions should be cut back, or even scrapped. CGT raises only £9bn a year for HMRC/ Treasury, but potentially could raise a lot more from wealthy UK citizens, as fewer than 300,000 pay it at present.

Tax experts said that Mr Sunak, as a priority, could axe CGT exemptions in the property sector, hitting those with more than one home; those using the nine-month CGT exemption on buying and selling and those who rent out property. *However, George Bull of tax firm RSK warned that the chancellor could go further by targeting wealthy individuals when they sell assets, including shares.*

One possibility, which would hit EMI hard, is that, post review, Mr Sunak decides to level up the base rate of CGT to 20 percent, which is the basic Income Tax (IT) rate paid by millions of taxpayers, once their annual personal allowance of up to £12,500 has been used up. The higher 40 percent IT rate starts from £50,001 and the additional rate of 45 percent kicks in at more than £150,000 per year. Were he to pursue that path, he would, in the interest of consistency, have to raise the CGT rate above 20 percent for those in the higher income brackets too.

Such a rise in CGT, were it to occur, would impact all employee share schemes, although not many employees make share scheme gains of more than £12,300 in any one year. *However, the situation would be vastly different were the chancellor to lower the annual CGT allowance to just £2,000 per year, which is what the dividend allowance is.*

That would hit the employee share scheme sector across the board, cutting net gains by employee participants quite markedly, thus reducing the appeal of tax-approved share schemes.

From the chairman

A quick fix to covid is highly unlikely, however governments may encourage wishful thinking. Even Goldman Sachs is shedding staff, ways of working have changed for a time - if not for ever - and it is curtains for any industry devoted alone to the shrinking pool of employees.

At the top level the executive suite will still want the toss argued for it and there will be stronger headwinds now ESG, once the preserve of activists like Hermes, has been widely adopted by investors in its semblance of a virtue signal.

In this sea of troubles employee share ownership needs to look beyond the top few or the managerial few and to spread wealth and hope as widely as we realistically can. (This is a paradigm-free zone.)

It is time to construct and promote a new approach to the famous "wages of capital", which - remember - were always to be additional to the wages of labour, through which both employees and other people connected with businesses can receive upside. The new upside, perhaps inspired by SRUs, will need to be free to workers, cheap for companies to administer and unsupported by tax breaks. The Treasury will be doing enough heavy lifting elsewhere to keep the economy afloat.

After all, people have been paid to test remedies for the common cold for as long as I can remember. Why should covid be any different?

As things stand, the number of employees will fall radically over the coming months. Our legacy industry supported by tax breaks may have long-run success but in a narrowing furrow.

Let us now seize the moment, help millions and create a new way of doing things.

Malcolm Hurlston CBE

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Currently, CGT is levied at ten percent on assets and 18 percent on property for base rate IT payers. Higher rate payers are levied 20 percent and 28 percent respectively. The current annual CGT exemption per individual is £12,300 worth of gains per year.

The Treasury wants to reduce the temptation of taking annual income in the form of gains to qualify for the lower CGT rates, which is what some higher -rate taxpayers do.

EMI stands out as a potential fall guy under a tougher CGT regime because when EMI options qualify for Entrepreneurs' Relief (ER), the rate of CGT levied on the option value gains falls from 20 percent to just ten percent. The use of ER with EMI to reduce CGT has already been tightened up, but EMT + ER still obtains the ten percent CGT rate on £1m worth of gains where the EMI option and shares have been held for at least two years prior to exercise and sale. Mr Sunak might look at this again as the government searches for new revenue streams.

In the 2018-9 tax year, 8,000 key employees exercised £760m worth of EMI options, at an estimated cost to the Exchequer of £370m in lost Income Tax and NICS. The gross average return per head on EMI cashed in options in that year was c.£95,000, but only £83,260 of this amount qualified for the reliefs, according to HMRC statistics. However, HMRC does not tell us how much they paid in CGT.

The number of key employees, some of them SME directors, who hold unvested EMI options is unknown, as the statistics do not separate out those who were awarded only one set of options, as opposed to those who were granted second or even third tranches in successive years. Nor do they tell us how many are in EXIT-only EMIs, or those whose employers have gone bust, rendering their options worthless. Nevertheless, it is likely that at least 30,000 senior employees are holding EMI options which they hope to cash in within the next three years.

Earlier, the Office for Budget Responsibility (OBR), said that government measures to address the impact of the virus would result in an unprecedented peacetime rise in borrowing this year, rising to between 13 and 21 percent of GDP, producing a deficit of *£322bn*. On top of that there will be another £60bn bill for rolling over existing debt. In addition, the OBR fears that *Bounce Back* scheme borrowers will fail to pay back £3 out of every £10 borrowed. *The Times* said that Mr Sunak could go for well-off individuals in order to help pay off the still growing pandemic bill.

The OTS scoping document said that the CGT review would: look at specific areas such as "administrative or technical issues relating to • clearance and claims procedures • *chargeable gains on shares and securities, including holdings of listed shares* • the buying and selling of property • the practical operation of principal private residence relief • *consideration of the issues arising from the boundary between income tax and capital gains tax concerning employees* • valuations, record-keeping, calculating any tax payable and making returns, including claiming losses • the information HMRC has and can use to help them reduce administrative burdens, improve customer experience and ensure compliance."

However, "In keeping with the focus on smaller businesses and individuals, this review will, in particular, not extend to issues specific to corporate groups, such as substantial shareholding exemption, company reorganisations or de-mergers."

In general terms, the OTS review will consider CGT and the taxation of chargeable gains by individuals and SMEs and develop recommendations for simplification, including *reducing distortions* from both an administrative and technical standpoint. This will include:

- The overall scope of the tax and the various rates which can apply
- *The reliefs, exemptions and allowances which can apply, and the treatment of losses*
- *The annual exempt amount and its interactions with other reliefs*
- The position of individuals, partnerships and estates in administration
- The position of unincorporated businesses and stand-alone owner-managed trading or investment companies, including the setting up, selling or winding up of such businesses or companies
- Any distortions to taxpayers' personal or business investment decisions
- Interactions with other parts of the tax system such as Income Tax, Capital Allowances, Stamp Taxes and Inheritance Tax, including potentially different definitions for similar transactions/events.

There was scepticism over a Treasury claim that the review was merely routine and was not expected to lead to policy changes. The mood in government and Whitehall has changed rapidly from '*Let's throw everything, including the kitchen sink, at Covid-19'* back in April to "*How are we going to pay for all this?"* in late July as the pandemic appeared to recede.

The OTS promised wide consultation with all stakeholders. It appealed for ideas on how to simplify CGT and published an online survey and call for evidence on the topic The survey is open for responses until the end of summer.

Roadchef: trustee pledge – 'We will fight to the end'

Treasury minister Jesse Norman MP is in discussions with senior HMRC officials about how to resolve the *festering sore* of the Roadchef Esop compensation scandal, *newspad* can reveal.

Roadchef (Employee Benefit Trustees Ltd), which represents hundreds of former motorway services chain employee Esop participants, warned the Esop beneficiaries that they could end up with next to nothing after a 20 year battle for justice unless HMRC agrees not to tax their varying compensation pots.

Some of the beneficiaries have lost patience with the trustee, though there is nothing they can do in law, as the original Esop trust deed was vague in some respects by today's standards and the trustee is convinced that he is acting in their best interests.

One told *newspad*: "*If they lose this campaign there will be a lot of angry people, as they probably have blown all our compensation on trying to fight this never ending saga. The only winners out of this are Capital Law, Reed Smith and HMRC and we, the beneficiaries, are the losers again.*"

The trustee, Reed Smith Corporate Services Ltd, is in contact with the minister and more than 40 Tory MPs who have Roadchef Esop beneficiaries living in their constituencies. As part of a growing political campaign, Reed Smith has held video-conferences with the MPs about the impasse and briefed them on draft wording to amend the current tax legislation in order to provide a tax-exempt solution.

"*I know that Jesse Norman is in discussions with high-ranking officials within HMRC. Such pressure from the minister can only be a good thing*," said Christopher Winston Smith, trustee of the Roadchef EBT1. "*As a consequence of my previous meeting with the minister, he is now putting pressure on HMRC to come up with a solution.*"

The trustee told the Esop beneficiaries in his latest round-robin that he aims to achieve a tax-free settlement of their compensation pot claims. Mr Winston Smith told them that Roadchef EBT1 was fighting on two fronts: first, in parliament to get as many MPs as possible to back an amendment to existing tax legislation and secondly, to challenge HMRC in the tax tribunal to resolve the beneficiaries' tax position once and for all.

The trustee claimed that the clock was ticking against HMRC, which had to decide shortly whether to "*raise or lose the right to make certain tax assessments on the Trust and our beneficiaries.* ***Such assessments could lead to a tax bill that could wipe out all that which we have recovered.*** *If they (*HMRC*) raise assessments, we shall have to appeal them in the Tribunal. That will take more time. Our political drive saves the time and cost of a tax battle in the Tribunal, but cannot continue if the government does not support our cause*," he added. The trustee complained that HMRC officials had raised various questions under their statutory powers, but that the info they had requested was six years old and all relating to *how much* and not *whether, tax is payable by the trust or the beneficiaries.* "We will not stop until our beneficiaries get tax free distribution they deserve," added Winston Smith.

Six and a half years ago, High Court judge, Mrs Justice Proudman, ruled that Tim Ingram Hill, former chairman and ceo of Roadchef, should have to pay compensation to the hundreds of former employees who participated in the company Esop. Their shares were sold by Mr Ingram Hill, together with his own Roadchef shareholding, to a Japanese investor in 1988. However, there is still no sign that the compensation will be paid any time soon.

EO: "Gandhi would have approved"

Graeme Nuttall OBE, a partner at law firm and Centre member **Fieldfisher**, called for employee ownership to reach new heights by fulfilling environmental, social and governance (ESG) obligations. The UK national employee ownership associations (EOAs) backed his proposal, agreeing that employee-owned companies should be an exemplar for reducing inequality, tackling climate change and sustainability, as the world faced the ongoing challenges of Covid-19. The EOAs, the Irish ProShare Association and Employee Ownership Australia jointly announced that they would encourage every employee-owned company to make an overall positive contribution to society and the environment, as part of promoting the success of the business. Co-operative Development Scotland too sees employee ownership as key to a stronger, more resilient, productive and fair economy.

Mr Nuttall, an expert on the employee ownership business model and author of the Nuttall Review of Employee Ownership, presented his thoughts for the *Gandhi Foundation*'s annual lecture, at which past speakers have included Archbishop Desmond Tutu, His Holiness the Dalai Lama and former Archbishop of Canterbury Dr Rowan Williams. The Gandhi Foundation welcomed this practical application of M K Gandhi's ideas.

"*The time is right for employee ownership with* *added Gandhian purpose. What Gandhi encouraged us to consider is a new definition of employee ownership, a bolder definition that defines it with enhanced corporate purpose, so that employee-owned companies are synonymous with good corporate citizenship*," said Mr Nuttall.

"*We need to see positive changes in society and our relationship with the environment. What better dynamic is there to make these essential changes than to channel the energies of employee owners towards finding and implementing solutions*?

"*The employee ownership sector can lead the way in good corporate citizenship by embracing wider corporate purposes as part of what it means to be employee-owned*."

Mr Nuttall said the pandemic had changed the fundamental dynamics of the way people work. He cited the 'Build Back Better UK' campaign's statement of what it wants, as a beacon for how society can change for the better and protect public services, tackle inequality, provide secure well-paid jobs and create a shock-proof economy that can fight the climate crisis.

Mr Nuttall explained this was not a radical suggestion for the employee ownership sector in that there were already employee-owned companies leading the way, such as Riverford Organics and Paradigm Norton. In addition, there were employee-led public service mutuals and worker co-operatives that already combined employee ownership with wider corporate purpose.

EVENTS

Book now for Jersey: September 25

The Centre's Jersey share schemes and trustees seminar, held in partnership with the Society of Trust & Estate Practitioners (STEP - Jersey branch), is re-scheduled for **Friday September 25** with the proviso that travel and social distancing restrictions are eased by the autumn. Given the impact of the pandemic, the hiatus in Brexit negotiations, corporate governance moves, the international reach of trustees and the growth in employee ownership trusts, it is essential for those interested in employee share ownership schemes and trusteeship to be updated at this annual seminar. The programme includes sessions on the loan charge, case law and Esops, plus "*A day in the life of a tax inspector*" - looking at the knock-on effect of the pandemic for those working at HMRC.

The seminar will conclude with a lunch for delegates and speakers. Rt Hon. Mark Field, who was a strong supporter of the Crown Dependencies when a Minister of State at the Foreign and Commonwealth Office, will be guest of honour. Experts include: Katherine Neal, Ogier; Graham Muir, CMS; David Pett, Temple Tax Chambers; David Craddock, David Craddock Consultancy Services and Paul Malin, Haines Watt. The extended half-day event will be chaired by Centre founder and chairman, Malcolm Hurlston CBE. Book your seat(s) now. ***Delegate prices***: Esop Centre/STEP members: **£375**, Non-members: £480. To reserve your place contact the Centre by email juliet_wigzell@zyen.com or phone +44 (0) 20 7562 0586.

British Isles share plan symposium – March 24

The Centre's fourth annual share plans symposium and *newspad* awards presentation will take place on the newly revised date of **Wednesday March 24 2021** at a central London location. Delegates from share plan issuer companies are welcome to attend FREE OF CHARGE. The revised programme will be as posted on the Centre website for the original event, postponed from March 26 this year owing to Covid-19, with topic slots updated. The Centre had hoped to run the symposium this autumn: however many member accounting, consultancy and legal groups are not allowing their London premises to be used for public conferences and other events until next year when the pandemic may have receded.

Our thanks to **Ocorian,** the independent provider of corporate and fiduciary services, for sponsoring the symposium, which offers guidance on installing and operating employee equity schemes in companies of all sizes.

A challenging programme segment dealing with executive remuneration, post pandemic, is tabled too. The presentations will be delivered by leading practitioners in their respective fields of expertise. Speakers wishing to update their presentations should inform Fred Hackworth at: fred_hackworth@zyen.com. For all other enquiries about this event, contact Juliet at juliet_wigzell@zyen.com or call +44 (0)20 7562 0586. Admission prices will remain as advertised – **£395**+vat for delegates from member practitioners and **£595**+vat for non member practitioner delegates.

WEBINARS

Upcoming

***Esop sofa lockdown stories: adapting to business life during the pandemic.**

On **August 4** at **11:00am** Investec's Kevin Lim will chat with client Laura McNeil, assistant company secretary and international share plans manager at AIM listed technology business Blue Prism, about how business life has changed for her and her colleagues and how Blue Prism's share plans are faring since lockdown.

***The case for employee share ownership: the heart of the matter revealed – August 14, 10:30am**. What does employee share ownership really mean? What opportunities are there for effective employee share ownership?

Looking at the design and structure of schemes, the human resources dimension, the origins of equity reward and its political appeal in the UK and internationally, share schemes expert David Craddock will take us to the heart of the matter.

Poor advice holds back SIP take-up

SMEs were too often deterred by poor advice and costs fears from installing a Share Incentive Plan (SIP) in their workplace, **William Franklin**, partner at Eso lawyers **Pett Franklin**, told a Centre *webinar* entitled ***Awarding shares to employees in a Covid world.*** The tax advantages of using a SIP were so impressive that it was "somewhat disappointing" that the take up of the plan by UK companies was barely rising, he said. Some SMEs were put off from using the SIP because the administration of the plan was "quite complex" and so the cost of installing it in some SMEs was disproportionate. William criticised some advisers as having "poorly understood" the full extent of employee benefits offered by the SIP. The take up among unquoted companies and the smaller quoted companies was low. "Some people have lost interest in the SIP," he said. However, the SIP had been adopted to a reasonable extent by the bigger public companies.

He outlined the "deeper issues" about SIP: that it did nothing to help transitory employees and tended to shut out younger employees who can't afford to buy partnership shares. SIP rewarded payroll employees, but not those who worked for the company on a sub-contracted basis. Sponsoring companies had to think about the administrative consequences of SIP plan design – e.g. what about employee shareholder voting rights and the definition of 'bad' leavers? Some employers shied away from awarding dividend shares because their feared that the rules would become too complex.

William reminded listeners that the SIP tax-advantaged rules allowed the award of free shares to employees worth a maximum £3,600 a year; allowed them to buy Partnership Shares worth up to £1,800 per year, companies to award matching free shares in a maximum 2:1 ratio, allowing employees to obtain £9,000 worth of shares annually and reinvestment of dividends, of which the first £2,000 worth were tax free.

As the shares were held in trust, the employees had beneficial ownership but didn't have legal title. That helped plan sponsoring companies who didn't want their share registers cluttered up with the names of thousands of small employee holdings. Nevertheless, the structure did give employees a sense of ownership. "*Ïf you hold the shares for the full five years, disposal is tax free – it is extraordinarily generous*," he said.

Good company communications with employees about the SIP were essential, said William. "*There are too many stories about employees who were ignorant about the many benefits of SIP basically because their employers had never explained the plan to them in detail. The communication must be kept going, to remind employees how valuable an asset the SIP is,"* he added.

The SIP fitted in well with the temper of the times, said William. "*There is a feeling that there should be a greater sharing of wealth, but there is the question of whether it should be reformed – and to reduce the current five year rule to qualify for the full tax relief would make it far more accessible to many more employees."*

****Tools of engagement: the power of all-employee plans -*** Companies should offer more than one all-employee share plan in order to broaden the suite of incentives, **Sarah Keith**, director, Tax & Legal, at **Deloitte**, told a Centre webinar. Share plans such as SAYE, the SIP and CSOP could be used in combination – in hybrid plans, as part of a company's recruitment and retention package, said Sarah, a solicitor with 20 years' experience of advising quoted companies on global executive and all-employee incentive plans. She is a director in Deloitte's reward practice.

Employee share plans were under scrutiny by the government and regulators and the question had to be asked whether Esops were still fit for purpose, said Sarah. Her opinion was that all-employee incentive plans "*need to move on."* Tax-advantaged plans were largely unchanged for at least a decade, yet the national employment profile had changed considerably. Home working was a success, especially during the pandemic, but equity incentive arrangements failed to address the new "Gig" economy of freelancers and part-time employees, said Sarah. Many companies were now trying to build affinities with gig employees. The way we viewed employment, when seen through the Covid lens, was suddenly very different – we appreciated more than ever the work performed by not only NHS staff, but also by call centre and supermarket staff and delivery drivers – they were all *key workers*, she said. Now people-based new apps as communication and engagement tools were essential, but were they all in the reward and retention tool box? asked Sarah.

The five-year full tax relief SIP rule had to be scrapped now, as so many did not stay with the same employer for such a length of time – even three years was too long in the eyes of those who accepted with relish the immediacy of cash bonuses. Affordability was still an issue, so why not give employees more free shares, as was possible within the SIP rules? However, such plans did not include non-employees, though it was not impossible that they could be brought into equity incentive plans, said Sarah.

The share schemes sector could focus on three priorities: *move away from the one-size-fits-all approach when setting up plans – increased personalisation of reward was what was wanted *reflect on the new demographic and diversity realities and how they should factored into the design of employee equity plans and *adopt a broader reach, changing from alignment of interests to affinity as a loadstone to address the rise in alternative forms of employment.

***Employee share trusts in a dynamic share market**

An earlier Centre webinar covered employee share trusts and, in particular, how they could be used to establish a dynamic market for employee share ownership schemes. The speaker was **David Craddock,** an independent consultant specialising in Eso and reward management. He is the author of *The Tolley's Guide to Employee Share Schemes*, plus other essential books and courses. Mr Craddock told his virtual audience: "*The employee share trust is the most tax-efficient and commercially effective vehicle for operating an internal market in the shares of a private company. It allows employees in private companies to sell their shares to a willing market for value*."

He explained, via diagrams, how the employee share trust works in practice to support the operation of employee share schemes through the recycling of shares. He described how the trust can facilitate succession planning and investment diversification for owner-managers of private companies and how it could provide the basis for a management buy-out (MBO). Share trusts, many of them based offshore, were recognised by HMRC for their key role in the operation of Eso schemes – e.g. their ability to buy back shares from (*say*) employees who left their jobs and then sell the shares on to other employees. If there were no stock exchange quotation for the shares of a privately held company, then the trust operated as a market for the shares, explained David. By contrast, quoted companies used share trusts as a 'warehouse strategy' – taking the problem of employee share plan administration potentially out of their hands.

Companies could help fund loans to the share trust via asset guarantees to the bank, a process which helped employees buy the shares. So it was very important for the directors of the company to buy into the employee share ownership concept.

A crucial factor was the independence of the trustees, who had to operate in the best interests of the beneficiaries, i.e. the employees: "The company cannot tell the trust what to do," said David, who had encountered a case in the US where a trustee had voted the employee shares against a proposed takeover, creating many difficulties. *Newspad* editor Fred Hackworth asked David what his advice would be to the trustee in the case of *Royal Mail* (*see news story on page 13*) where beneficiaries might be offered a significant premium to the market share price in return for their votes in a possible takeover bid - which could lead to substantial redundancies. David's belief was that if the risk of heavy redundancies, following a takeover, was high, the trustee should vote the employee shares against the proposed takeover.

Looking at the Employee Ownership Trust (EOT), which is widely used by SMEs to establish co-ownership *(although employee members of an EOT tend to own just one nominal share each*), David warned that the business owners sometimes missed the point that it was unwise to sell 100 percent of the shares to the trust because that left no shares left with which to set up an employee share ownership plan.

All the webinars were hosted and chaired by **Alderman Professor Michael Mainelli**, director of the Esop Centre, or **Ian Harris**, managing director of Z/Yen Group Limited.

MOVERS AND SHAKERS

Esop Centre welcomes ShareForce

New Centre member **ShareForce** is revolutionising the way listed and private companies report on their share and cash incentive scheme programmes. Using its proprietary, industry-leading technology, ShareForce alleviates the administrative burdens of managing, testing, and accounting for incentive schemes. The system provides clients with the flexibility to create a plethora of reports within seconds, including amortisation tables, deferred tax and audit-ready and IFRS compliant reports that have been successfully audited by all the big audit firms. As such, multiple departments in different countries, including the reward, remuneration, finance and company secretarial teams, are able to interact seamlessly, making use of the digitised and reporting processes.

ShareForce is a subsidiary of the VAT IT Global Group, which services more than 15,000 clients in 107 countries. They include some of the largest listed companies on the JSE and LSE, as well as large global private companies. Its team is agile, smart and skilled. Comprising specialist accountants, CFAs, mathematicians, IT developers, and engineers, it provides both robust technology and sound technical advice. ShareForce's mission is to solve business pain points derived from a fragmented share scheme process and its high costs, by providing a holistic solution together with hands-on support from its industry experts.

Your Centre contact at ShareForce is Adva Lewitte, email: adva.lewitte@shareforce.net and phone +44 (0)7399 676222.

On the move

*Please note that the email address of *newspad* editor **Fred Hackworth**, for all Centre communications (including queries about future UK share plans conferences), has changed to: **fred_hackworth@zyen.com** (*note the underscore)***.** Marketing departments should be aware that his former e-address: *fhackworth@hurlstons.com* is no longer in use. Members who regularly send employee share scheme bulletins and other news of their personnel and business activities are requested to use the @zyen.com address from now on when sending contributions/information for publication in our monthly *newspad.*

***Cayman Islands** Speaker of the House **William McKeeva Bush** pleaded not guilty to assault charges stemming from an incident earlier this year at a West Bay Road bar. Appearing in summary court by speaking via video link from his lawyer's office, Bush pleaded not guilty to three counts of common assault and one count of drunken disorderly conduct. No date has yet been fixed for his trial.

HMRC** has changed its email addresses. Instead of its email addresses ending in @hmrc.gsi.gov.uk, they'll end @hmrc.gov.uk. Any emails that clients send to its old email addresses will still be redirected. HMRC said in ERS Bulletin 36 that it appreciated that many of the issues surrounding employment related securities and the pandemic had caused concern to stakeholders, many of whom had contacted the share schemes mailbox. More information on available support for businesses is found at coronavirus (COVID-19) business support. HMRC warned: "Due to the situation caused by the pandemic there may be delays in post reaching this team." HMRC recommends that clients send all enquiries ***by email to: Shareschemes@hmrc.gov.uk. If clients need to disclose sensitive information, and have concerns about sending this by email, they should send a short email, without any sensitive data,with details of how HMRC can contact them. "*HMRC will get back to you as soon as possible to arrange an alternative. If you prefer to send enquires by post, our address is*: Charities, Savings and International 1 HMRC BX9 1AU"

*Centre chairman **Malcolm Hurlston CBE** was appointed acting chairman of the **UK Shareholders'Association (UKSA**), after the previous chairman, Mark Cardale, stepped down from his post. "*Mark has made a great impact during his brief tenure of the chair but found himself unable to commit wholeheartedly to our future plans. Malcolm Hurlston has agreed to step in for the time being. He is an active investor as well as an experienced chairman*," said UKSA. In addition to chairing he represents the interests of employee shareholders and SSAS users. Malcolm Hurlston said: "I am happy to step in and help, as UKSA restructures to expand. In addition I shall take every opportunity to see employee shareholders gain their full democratic and economic rights in an aspirational society."

*Centre member **Global Shares** has appointed **Rogier Kneepkens** as its new market development director. He will oversee business requirements as Global Shares enters new markets and roll out new products. **Martin Osborne-Shaw** moved from his role of head of client service delivery EMEA at *Shareworks* by Morgan Stanley to **Global Shares**. He now heads its UK and European Sales teams. His new contact details are: Email: mosborneshaw@globalshares.com - Tel: +44(0) 7738 091688.

*Centre member **Sanne** made two key appointments: Catherine Law as head of business development for the Asia Region. Based in Sanne's Hong Kong office, Catherine will continue to drive Sanne's alternatives and corporate offering, in addition to exploring new business development opportunities across Asia. Catherine joined Sanne from Apex where she was head of sales in alternative funds in Greater China. In addition, Sanne appointed Sakuya Tajima as head of business development in Japan, to strengthen its Asia-Pacific business. Working closely with country head, Mark Bennett, Tajima-san will be responsible for business development in Japan.

UK CORNER

Shares for Salary at the *Daily Mail*

More than 1,650 employees of the **Daily Mail & General Trust (DMGT)** have enrolled in a *Shares for Salary* plan to save their jobs. DMGT introduced the *Share Substitution Plan* for employees in the UK, US, Australia and Ireland. DMGT announced a temporary reduction in pay of up to 26 percent for employees earning more than £40,000. The full value of their pay cheque cuts was substituted for a conditional award of DMGT shares which will vest next January.

To safeguard the employees, Centre member EQ helped DMGT introduce a *'look back'* feature, so that if, at vesting, the share price is underwater (*below the share price at the point of granting the award*) the look back feature will be implemented, requiring DMGT to compensate employees by making up the difference via either cash or awarding them additional shares.

DMGT chairman, Lord Rothermere, said: "Our guiding principles have been to protect jobs and to create a system which means that we are all contributing, in a fair way, towards the company's long-term health."

Paul Matthews, ceo of EQ Boardroom, explained: "*How do you engineer an employee share plan during a pandemic that successfully contributes to protecting the future health of the company? This was the primary objective EQ (Equiniti) and DMGT set out to achieve with the SSP*. DMGT has operated Share Purchase+ (*A group term for DMGT's SIP and executive & discretionary plans)* for many years, and it is as dedicated as ever to ensuring it is a benefit that employees value. However, there was a different objective for this plan. Even some employees who were below the threshold salary opted to participate in the *shares for salary* scheme and others chose to take even greater salary cuts to receive more shares. Employees could see significant returns at the end of January as share prices begin to recover. While nothing can be guaranteed, DMGT's 'look back' feature mitigates uncertainty ensuring the scheme continues to weather market volatility.

"This initiative has been extremely well received by our employees," said John Machin, DMGT's head of reward**.** *"The plan has given them a tangible stake in the success of the company ensuring they are fully engaged and motivated in these unprecedented times".*

Gift staff 15 percent of the equity, investor urges

Investment tycoon Jeremy Hosking is urging struggling estate agent **Countrywide** to gift 15 percent of its shares to senior management and staff as an incentive to spark a turnaround. Mr Hosking, one of the group's biggest investors with a hefty 7.8 percent stake, wrote to the chairman urging him to place maximum pressure on the remuneration committee to draw up the scheme. "*We can see huge equity upside if all goes well. However ... we appreciate there are risks the company in its present form may not survive current challenges,*" Hosking wrote in his letter. Countrywide has struggled to maintain market share. Applied to all 9,000 staff equally, it would be worth about £600 each pre-tax. Hosking said the bonus would give employees confidence that they would share in any successful turnaround, although gifted shares are taxable. Two years ago, Countrywide, which owns Hamptons International and Bairstow Eves, launched an SAYE scheme for 8,300 *eligible* employees as a replacement for its previous Share Incentive Plan (SIP), which had been receiving poor employee renewal rates.

Taps turned full on for ousted water ceo

Thames Water's ousted ceo left with a £2.8m payoff, despite a difficult period at the helm, including fines for sewage leaks. Steve Robertson quit last May after slow progress in turning around Britain's biggest water company, which has been fined repeatedly for poor performance. Robertson was given £770,500 in lieu of notice, equivalent to 12 months' pay and perks, plus £2m for loss of office, too. He is being replaced by Sarah Bentley, who will receive more than £3m in bonuses over the next three years to compensate for her loss of bonuses lost after leaving her position as chief customer officer for Severn Trent. Her basic pay of £750,000 pa and £120,000 in pension contributions could take her total annual reward to more than £3.2m a year, a level which Thames Water claimed was 'benchmarked' against other water companies and other utilities in the south-east. A Thames Water spokesman said: '*Our customers will not pay for the payments made to Steve Robertson, who received no bonuses for two years. His payment for loss of office, which was calculated with his incentives and performance in mind, was funded through earnings generated outside the regulated businesses. The money would otherwise have been due to our shareholders*.'' Huge payouts and dire performance made the water giants a target in last year's General Election campaign. According to a *YouGov* survey, 49 percent of voters still support re-nationalisation of the utilities.

HMRC promises leniency over missed deadlines

HMRC announced in ERS Bulletin 36 in late July that that some employers and agents had struggled to meet ERS tax and filing obligations owing to the pandemic and promised leniency in genuine cases.

The bulletin said: "*You should try to meet your obligations such as registering new schemes, filing returns and notifying new EMI options as soon as you can.*

"However if you cannot, and this is due to the Covid-19 pandemic, HMRC will consider that as a reasonable excuse for missing some tax obligations."

Clients have to explain how they were affected by the pandemic when they make their appeal against automatic penalties and are advised to refer to the latest guidance on disagreeing with a tax decision.

HMRC clarified in the same bulletin how the 12 month extended payment holiday for SAYE–Sharesave would apply, warning that client employee savings contacts would be cancelled, with the loss of tax privileges, in certain circumstances. If, for example, an SAYE participant had already postponed contributions by up to 12 months pre-Covid and did ***not*** resume payments on the 13th occasion, their SAYE contracts would be cancelled. The extended payment holiday terms would therefore ***not*** apply to those participants. However, if an SAYE participant postponed contributions up to the maximum 12 months, but resumed payments on the 13th occasion and then after Covid-19 became furloughed or on unpaid leave and needed to postpone contributions again to their SAYE plan then they ***would*** benefit from the extended pause. If a participant had postponed payments by up to 11 months in February 2020 and became furloughed in March 2020 and as a result then missed contributions in April and May, a total of 13 months payments will have been missed. Then the extended payment holiday terms ***would*** apply in these circumstances. Finally, participants who were due to resume payments on the 13th occasion in March but who were then furloughed or took unpaid leave owing to Covid-19 and who were then unable to afford to resume payments, the extended payment holiday ***would*** apply to them, added HMRC.

HMRC said in the bulletin that some participants in **EMI** schemes had been unable to meet the working time requirement in Schedule 5 ITEPA of at least 25 hours per week or, if less, at least 75 percent of their working time, due to the Covid-19 pandemic. HMRC will accept that, from March 19, if an employee would otherwise have met the scheme requirements but did not do so for reasons connected to the pandemic, the time which they would have spent on the business of the company will count towards their working time. HMRC will disregard the reduction in working time as a disqualifying event under section 535 ITEPA if it is for reasons connected to the pandemic. *It promised legislative changes in the current and next Finance Bill to reflect this* to ensure that EMI options granted before and after March 19 will remain qualifying in circumstances outlined above. HMRC will accept the following as reasons for which an employee may have been unable to meet the working time requirements: *furlough *working reduced hours *unpaid leave In all cases, the reason must be attributable to the current pandemic and the period must have begun on or after March 19. Employers and employees must keep evidence to show that there is a link to the pandemic.

Chancellor's job protection scheme starts to unwind

From this month on, employers have to shoulder at least part of the cost burden of furloughing millions of employees chancellor Rishi Sunak's pandemic jobs retention scheme started to unwind on August 1, because although the Treasury continues to pay 80 percent of wages for un-worked employee hours paid up to a maximum £2,500 per month, employers, however, must pay their NICs and pension contributions.

From September 1, the taxpayer's contribution will be reduced to 70 percent of normal wages, up to a cap of £2,187.50 per month for the hours the employee does not work. Employers must then make up the difference of *ten percent* to bring furlough payments to 80 percent of wages (up to a cap of £2,500) for un-worked hours, while continuing to meet NIC and pension contributions on furloughed wages.

From October 1, the taxpayer's contribution will be reduced to 60 percent of wages, up to a cap of £1,875 per month for the hours the employee does not work. Employers must make up the difference of *20 percent* to bring furlough payments to 80 percent of wages (up to a cap of £2,500) for un-worked hours, while continuing to meet NIC and pension contributions for furloughed wages.

Some employers have topped up their employees' salaries since Lockdown started last March, but others have not been able to do this, especially in the hospitality, retail and travel sectors, for lack of cash reserves.

The pensions ombudsman, Anthony Arter, told MPs that some companies had been trying to encourage employees to leave pension auto-enrolment schemes, in order to reduce their obligatory contributions as employers. The regulator said that any company found guilty of breaking the rules would be fined up to £50,000 and forced to reinstate all missed contributions. One in ten UK employees had either stopped or reduced their regular occupational pension fund payments during the pandemic, revealed a survey by insurer Aviva, but five percent of employees it surveyed actually *increased* their pension contributions.

Companies must maintain full records of CJRS claims, including an audit trail of which version of HMRC' guidance was applied at the time of each claim, along with any subsequent adjustment. All correspondence, communications and guidance issued to employees should be retained, along with the formal changes to their contracts and working versus furloughed hours, said advisers *Taxand.*

The chancellor unveiled his latest pandemic-fighting package on July 8, but there was nothing in it for the employee share schemes sector.

*Several large retailers, including John Lewis Partnership, Primark and William Hill turned down his offer to employers of a one-off payment of £1,000 for every employee retained until at least the end of January next year. Such employees must be paid at least £520 per month in order for their employers to qualify for the grant. Primark said it would not claim the payment because it had already taken employees off the furlough scheme when the group re-opened its high street stores.

*A new Kickstart programme is being launched to create new fully-subsidised six month job placements for 300,000 young people aged between16-24. *Companies will get a one-off subsidy of £2,000 for each apprentice they hire who is under 25 and £1,500 for each apprentice aged 25 and above. This will be in addition to the £1,000 employers can get for taking on 16-18 years olds. *The rate of VAT imposed on most tourism and hospitality-related activities is being cut from 20 percent to five percent until January 12, next year, said Centre member **Bird & Bird**.

*UK companies are planning at least 113,000 redundancies within the next few months, revealed a survey conducted by *The Telegraph.* The worst hit sectors will be aviation, aerospace, retail and hospitality, especially when the government's job protection subsidy schemes wind down, it predicted. On a more positive note, German owned package delivery firm *Hermes* is recruiting 1,500 more employees for its UK delivery network and head office and it wants to hire up to 9,000 more freelance drivers.

Meanwhile, ministers and the financial services industry debated whether or not City professionals should continue to work from home or go back to their offices. Senior employees were digging their heels in and either demanding that they should be allowed to continue working remotely full time from home terminals or, work split weeks instead, with only two or three days maximum back in the office. Polling, published by *LEK Consulting*, showed that the *percentage* of white-collar staff wanting to return to their offices slumped from 53 to only 35 between April and June. The percentage wanting to work fully from home jumped from 18 to 28 over the same period, while the percentage wanting a mixed outcome, including more working from home, climbed from 29 to 38. However, ministers said staff should return to the City or Canary Wharf asap, as otherwise, hundreds of fast food, boutiques and other retail outlets faced ruin for lack of customers.

*Of companies who paid dividends to shareholders during the second quarter of this year, 75 percent either cut or cancelled their pay-outs, said **Link Group**'s dividend monitor. As a result, investors, including employee shareholders, suffered a record 57 percent fall in UK dividends during the quarter. Half the dividend reductions came from the financial sector, most notably from banks, as they were told by regulators to stop dividend payments in order to conserve cash.

Pandemic loan conditions *do* permit bonus payments

Large companies using CLBILS, one of the government's key business support measures, to obtain the finance they need due to the impact of Covid-19, have to promise *not* to raise pay or award bonuses to their top managers in order to qualify for emergency loans of up to £200m. However, pay rises and bonuses *are* permitted if: *they were *(in the case of a pay increase)* declared, or (*in the case of a cash bonus*) agreed in writing, before the loan was contracted; or *(*in the case of a pay increase*) it is in line with similar payments made in the preceding 12 months and does not have a negative impact on the borrower's ability to repay the loan. The restrictions don't apply to new senior management upon their joining the group after the date of the loan, but must apply to subsequent cash bonuses or pay rises. The government (operating through *British Business Bank*) guarantees 80 percent of eligible commercial loans borrowed by eligible UK-based businesses from accredited lenders. The maximum loan amount available was increased to £200m, but with added restrictions on dividends, share buy-backs and pay, for loan facilities exceeding £50m. Until a CLBILS loan is repaid in full, anyone in the borrower's group may not award pay increases **or** cash bonuses to senior management, said **Linklaters *Knowledge Portal.*** The restrictions apply to: *board members, *those within the senior managers regime for financial regulation purposes; *other directors or employees with strategic or planning roles; and employees whose activities are material to the group member's overall performance.

COMPANIES

*Bolton based online white goods seller **AO World** unveiled a £140m bonus pool for its 3,000 employees, who won't see any of it unless its current share price more than triples by 2027. Above a share price benchmark, ten percent of the added value will be shared out among all the employees. Shareholders will vote on the plan this month. "*It is not a fat cat scheme for people at the top of the business*," ceo John Roberts, who owns 22.5 percent of AO World, told the BBC's *Today Programme*. "*Everybody working in the business, whether in a call centre, warehouse or in management, will get up to one and a half times salary in one cheque at the end of a five-year period if we're successful."* The retailer's "value creation scheme" is based on A O World's share price. It has a target price of £12.55 by 2025 to give staff the maximum pay-out, although management said employees would get the equivalent of one year's salary if it reaches £9.41. Mr Roberts could earn £20m if the incentive scheme pays out, but pledged to hand the cash to Online Youth Zones, a charity he chairs to help disadvantaged young people.

*Amanda Blanc is the new ceo at insurer **Aviva** after her predecessor, Maurice Tulloch, left his post owing to a family illness. Ms Blanc will be paid a base salary of £1m a year, plus an annual bonus worth up to 200 percent more and long-term share awards worth up to 300 percent of her salary. On top of all that, she will get a pension cash contribution of 14 percent, taking her maximum potential annual reward to more than £6m. Mr Tulloch, who is on gardening leave for six months on full salary and pension contributions, is expected to cash in share awards and bonuses worth ca £2m.

*Fund manager **Standard Life Aberdeen** sold all its shares in clothing retailer **Boohoo** after claiming that the latter's response to sweatshop labour in Leicester allegations was inadequate. Boohoo had hit the headlines after introducing a potential £150m bonus scheme for senior executives….

*Trade unions accused **Centrica,** the owner of British Gas, of using the pandemic as a smokescreen in order to compel up to 21,000 employees to accept new work contracts, or lose their jobs. Centrica said pay and pensions would be protected, but it needed to simplify their contracts, using s.188 notices (*which allow companies to axe jobs and then reinstate employees on different terms*) as a last resort.

*Global audit giant **EY** faced questions and threats of legal action over its role in the bankruptcy of German payments processor **Wirecard** after signing off on the accounts for years. Accountant **Grant Thornton** was fined £1.95m by the FRC for failures during its auditing of the drinks group **Conviviality**, the owner of off-licence chains, which collapsed in 2018. The regulator said the fine had been reduced from £3m for admissions and early disposal, but it criticised Grant Thornton for failing to comply with ethical standards and requirements between 2014 and 2017. The watchdog found that Grant Thornton lost its independence during its audit of Conviviality during the 2013-4 financial year. The FRC said that the accountancy firm had admitted breaching audit standards and agreed to a package of measures to improve the quality of future audits, including the establishment of an ethics board to oversee compliance with ethical standards and increased ethics training for staff. The FRC had already criticised the quality of Grant Thornton's work for the collapsed cake and cafe chain Patisserie Valerie, which is being investigated for alleged accounting fraud, claiming its work was *"unacceptable"*.

*The FRC told the *Big Four* accounting firms to separate their auditing work from their corporate/

remuneration advice operations by *June 2024*. They have been given until October 23 this year to tell the regulator how they will make such operations totally independent from their auditing. Ring-fencing at the *Big Four* will include separate profit/loss accounts for their different business services. Critics claim that in a few cases there may have been a conflict of interest between different wings of accounting firms, where audit staff feared adverse effects on their employer's consulting business if they challenged client company directors on aspects of the accounts. **BDO**, the UK's fifth largest audit practice, raised the stakes by announcing that it was planning to ring-fence its audit practice later this year and Grant Thornton followed suit.

***John Lewis Partnership** announced that eight stores and outlets would close with the loss of up to 1,300 jobs. One of the two HQ buildings, called *Partnership House,* where 450 employees worked is earmarked for closure too. The historic annual employee bonus (paid in cash) will disappear for the time being. Chairman Dame Sharon White, who served at the Treasury in the Gordon Brown era, wrote to all staff (partners) telling them that JLP had "*too much store space for the way people shop now. Regrettably, it is likely that there will be implications for some partners' jobs"*.

***M & S** allowed live questions from investors, via the Lumi event app, at its agm, attracting three times as many Qs as last year.

***Rolls Royce** plans to end its final salary pension scheme four years early to conserve cash as plane engine orders fall owing to the pandemic. The company closed its final salary scheme to *new* employees in 2007, but it still has almost 10,000 staff who pay into the plan every month. In addition, it has 19,000 members who left the company but who are not yet drawing their pensions and 13,000 retirees who are. Rolls Royce wants to end the accrual of pension benefits now, as opposed to 2024, as originally planned and save £500m employer contributions in the process However, the company has to get approval from the fund trustee and pension members first. A spokesman said that Rolls Royce wanted to stop the build up of any more employee pension fund benefits before the end of this calendar year. The company made more than £150m in cash contributions to its pension fund in the last financial year.

*Sir Howard Davies, chairman of Royal Bank of Scotland (**RBS)**, *now renamed NatWest Group,* urged the government to lift the curb on banks awarding dividends by the autumn. He said that the ban on banks paying out dividends, or enacting share buy-backs was hurting their share prices because investors did not know when they would be resuming dividend payments. The ban was installed last March, when the pandemic worsened, to cope better with bad debts and emergency lending schemes. NatWest is still 62 percent owned by UK taxpayers.

*Czech billionaire Daniel Kretinsky became the second largest single shareholder in **Royal Mail (RM)** after increasing the equity stake held by his vehicle *Vesa Equity* by almost 50 percent to 12.1 percent, worth around £224m, but he has yet to clarify whether he may launch a takeover bid for RM, or whether he intends to push for operational changes in order to get the share price up from c 180p. *Schroder Investment Management* is still in pole position on RM's share register with a 14.8 percent holding. Postal employees hold a total stake of 11.46 percent, of which 7.6 percent is held directly in the RM SIP and a further 3.86 percent by the RM EBT.

*Fashion chain **Ted Baker** faced an agm revolt over a plan to raise executive reward as it fought for survival by announcing 500 job cuts. Rachel Osborne, who was appointed ceo in March, is paid £525,000, 14 percent more than her predecessor, Lindsay Page. The board wants to raise potential bonuses to a maximum 200 percent of salary. Advisory group ISS recommended that investors vote down Ted Baker's remuneration policy, claiming the board's decision to boost executive salaries and bonuses was unjustified. Since a hugging scandal forced out Ray Kelvin, founder and ceo, last year, shareholders have suffered profit warnings and were surprised by the revelation that the retailer had overstated the value of its inventory by £58m, prompting the departure of Kelvin's successor Lindsay Page in December. The shares have lost 90 percent of their value in the past two years.

WORLD NEWSPAD

Bankruptcy bonuses tarnish US top pay

Almost a third of 45 large companies seeking US bankruptcy protection during the pandemic awarded large bonuses to executives weeks before filing their cases, revealed a *Reuters* analysis. Under a 2005 bankruptcy law, companies are banned, with few exceptions, from paying executives retention bonuses while in bankruptcy, so they get round that by granting payouts *before* filing.

Thirty-two of the companies *Reuters* examined approved or paid bonuses within six months of filing. Almost half authorised payouts within two months and eight companies approved bonuses just days before seeking bankruptcy protection. JC Penney, forced to temporarily close its 846 department stores and furlough 78,000 of its 85,000 employees, approved almost $10m in payouts just before its May 15 filing. Then the company said it would permanently close 152 stores and lay off 1,000 employees. JC Penney claimed that the bonuses aimed to retain a "*talented management team*" *that had made progress on a turnaround before the pandemic.*

In their bankruptcy filings, many said the pandemic -inspired economic turmoil had *rendered traditional compensation plans obsolete or that executives getting bonuses had forfeited other compensation*. Luxury retailer Neiman Marcus in March temporarily closed all of its 67 stores and in April furloughed more than 11,000 employees. The company paid $4m in bonuses to chairman and ceo Geoffroy van Raemdonck in February and more than $4m to other executives in the weeks before its May 7 bankruptcy filing. Even after filing for bankruptcy Neiman Marcus tried to pay additional bonuses to executives. The company declined to comment. Hertz, which recently terminated more than 14,000 employees, paid senior executives bonuses of $1.5m days before its May 22 bankruptcy, in part to *recognise the uncertainty they faced from the pandemic's impact on travel,* Hertz said in its filing.

Such bonuses are raising objections that companies are enriching executives while cutting jobs, stiffing creditors and wiping out stock investors, said a *Reuters* journalist.

Forbes magazine too homed in on the bankruptcy bonuses controversy: "*What infuriates people is that the companies clearly have a two-tier system: the senior executives and ceos are financially looked after, whereas the average worker is not taken into consideration. Arguably, the top brass have the financial wherewithal to weather the storm and have accumulated enough contacts and connections to land on their feet somewhere else in a high-end, cushy role*," said Forbes writer Jack Kelly: "*The average employee at a company that is going through bankruptcy confronts a different reality. They're unceremoniously tossed out into a cruel and unforgiving job market, in which 51m Americans have recently filed for unemployment.*"

The *raison d'etre* of 'retention bonuses' is crumbling fast. Critics are asking – "*Where else could these executives find equivalent jobs in the pandemic economy, so what's the point of soon to be bankrupt companies giving them so-called retention bonuses?"*

Pay for Performance isn't really working, concluded *The Economist,* which featured an in-depth probe into US executive remuneration: "*Too often, executive compensation in the US is ridiculously out of line with performance…The deck is stacked against investors*," said top investor Warren Buffett who challenged the received wisdom in corporate US - that ceos deserve generous rewards because these are tightly linked to their companies' financial performance. Fourteen years later, the received wisdom was still looking shaky, said the magazine.

Pay for performance has been the mantra of *US Inc* for decades. Pay consultants and compensation analysts argue that US firms must pay top dollar for top candidates because they compete in a global market for talent. "*They say that firms have grown more complex and top executives must know how to manage new technologies and the complexities of globalisation. The corollary is that pay should be allowed to rise ever higher because superior ceo performance is (allegedly) maximising shareholder returns,"* said *The Economist.* Rise it has: according to *Bloomberg,* the median ceo compensation at US firms in the S&P 500 share index reached ***$14m*** last year. America's top earners, like Alphabet's Sundar Pichai who received *$281m*, made much more. The quantum is considerably smaller in western Europe, where reward practices have been more restrained. The ten best-paid UK ceos together did not earn as much as Mr Pichai in 2019. However, it emerged in a recent court case that leading banker Roger Jenkins received a £50m pay-off from Barclays in the aftermath of the 2008 global financial crisis. Jenkins had encouraged Qatari investors to pump billions into Barclays, saving it from seeking state aid to stay afloat. His *Golden Goodbye* was in addition to his salary and bonuses reward of £39m for that year, so his total reward came to almost £90m.

A report by the left-leaning Economic Policy Institute (EPI) scrutinised how much ceos at the 350 biggest US firms by revenue actually made once stocks and options were vested and exercised (as opposed to their notional values at the time they were granted). "*From 1978 to 2019 the average realised compensation swelled almost thirteen-fold in inflation-adjusted terms, outpacing the stock market. It shot up by 14 percent in 2019 alone. Such numbers were setting off alarm bells even before the covid-19 crisis. Now mass lay-offs and bleeding balance-sheets resulting from the recession have brought it into stark relief*," added *The Economist*.

However, activist fund managers are finally trying to clamp down on excessive executive equity incentive schemes. Despite the pandemic, which has brought massive redundancies in its wake, the upward pressure on US executive reward was still there, said *The Economist.*

Only one in ten members of the Russell 3000, a broad index of listed US companies, had reduced ceo salaries in response to Covid-19, including United and Delta airlines, hotel chains (Marriott and Wyndham) and industrial conglomerates (e.g. GE). Many others were *reviewing* their compensation plans. Though portraying this as a show of solidarity with employees, a few companies quietly handed top executives lucrative add-ons. A week after Hyatt Hotels cut its ceo's salary in March, it awarded him shares and options that could, if the company's share price rebounds, be worth much more than the sacrificed pay. Bonuses, grants of stocks and options tied to performance at big US firms have risen from a small portion of executive compensation two decades ago to more than half today.

The favoured measure of performance is a company's total return, which includes interest, capital gains, dividends and distributions realised over a given period of time.

As a consequence of a record bull market in equities after the global financial crisis of 2007-09, US executive reward has soared. Research firm *msci*, analysed realised ceo reward between 2007 and 2016 at 400 big public US firms. *At more than three-fifths of the firms, the executive reward level showed **no correlation** with ten-year total returns*. Some overpaid bad ceos; others underpaid successful ones. Pay-for-performance "may be broken", msci concluded.

US ceos make on average ***278*** times more (in *total* reward) per year than the average employee, though that ratio is lower than in 2015 when ceos made 286 times the salary of a typical employee and when they earned 299 times more in 2014. In terms of pay, benefits and the value of stock options when they are exercised, total US ceo compensation growth was ***1,007.5 percent*** from 1978 to 2018. That compares to a wage increase of only 12 percent over the same period for rank-and-file employees! In addition, total US senior executive compensation growth since 1978 has easily outstripped that of the stock market growth of 706 percent.

Not everybody agrees that ceo and senior executive compensation need to be reined in: "*Nobody gets upset that Beyonce makes a certain amount of* *money, but the person who is an usher at the stadium makes a fraction of that,*" said Carol Roth, ceo of Intercap Merchant Partners, a business advisory firm. "*So I don't understand why there is any comparison between what a ceo makes and a quote unquote average worker makes*."

Lucian Bebchuk, of Harvard Law School, argued that US ceos have too much influence over the opaque compensation process, but Don Delves of remuneration consultancy and Centre member **Willis Towers Watson** pointed to "lots of positive changes" in pay-setting over the last two decades, from greater independence for compensation committees to more sophisticated setting of performance targets. He conceded that ceos retain "*more influence over their own pay than any other person*." Compensation committees often rely on advice—and political cover—from pay consultants. Most problematic is their use of pay benchmarking, which has led to the ratchet-upward of pay for all ceos.

Activist investment funds are backing *say on pay* proposals, which let investors at agms express dissatisfaction about excessive reward outcomes. Though these votes are non-binding, managements often respond to negative shareholder votes by paring back overall executive reward. Global fund managers *Black-Rock* and other investors are voting against remuneration committee members promoting egregious compensation schemes. The US Council of Institutional Investors, which represents asset managers, urged the simplification of executive reward structures. *Calpers* wants to replace common executive reward packages, such as those based on three-year performance, with plans reflecting rigorous five-year performance measures, or to delay payouts from equity grants for at least five years. It is rebelling against the use of median pay as the favoured benchmark.

US mutual fund Vanguard said boards should not use the pandemic as an excuse to create easier performance targets, adding that "*at-risk pay should remain at-risk*." Glass Lewis, a shareholder advisory firm, warned that offsetting ceos' pay cuts with options packages may lead to lawsuits. Institutional Shareholder Services, the other big proxy adviser, discouraged sudden changes to long -term compensation, especially options re-pricing. Norges Bank Investment Management, which oversees $1trn in Norwegian pension assets, criticised the short-termism of current compensation schemes, arguing that a substantial proportion of pay should instead be *shares that are locked in for five or ten years*. Incentive packages that postpone payouts may, it is true, prompt ceos to demand higher pay to compensate them for the added wait…..

Veto on data sharing deal threatens share plans

A ruling by the European Court of Justice (ECJ) to veto a EU-US data sharing deal could complicate the transfer of employee share plans data from the EU to the UK after the Brexit transition period ends on December 31. The ECJ said it was concerned about the privacy of Europeans, suggesting that US surveillance laws were too intrusive. Its ruling left the US-EU privacy shield in tatters, because pre ruling, US companies had enjoyed privileged access to personal data from within Europe.

Data privacy lawyer Bridget Treacy (*Hunton Andrews Kurth*) said that the ruling could dent the UK's hopes for a favourable data protection adequacy ruling by the European Commission to apply from January 1 next year. She said that the UK could now expect its surveillance laws to be subject to the same scrutiny as those of the US.

UK based multinational companies who operate either separate share schemes, or extensions of UK schemes, within EU member states will be worried by the ruling.

They were relying on the continuing free flow of data concerning employee share plan participants between the EU and the UK, subject to the terms of the General Data Protection Regime (GDPR). Now it all depends upon how quickly Brussels will grant UK multinationals the key *'adequacy'* status necessary for them to continue operating their continental mainland employee share schemes normally after December 31.

However, continuing data flows from the UK to the EU were guaranteed by the UK government. Furthermore, not all data transfers from the EU will end because the ECJ exempted standard contractual EU-US clauses from its veto, subject to them being GDPR compliant.

Another worry for the UK share schemes sector is whether, post December 31, UK plan sponsors may be forced to publish a prospectus every time they want to make fresh equity awards to their employees who work in EU based subsidiaries. Passporting rights for financial services almost certainly will cease at the end of the transition period and access to markets via the *equivalence* route may fail to materialise (and is at risk of being withdrawn if the UK and EU regulatory regimes subsequently diverge). This may mean that UK and EU financial institutions will be required to be authorised separately in the jurisdictions in which their clients are based (unless they can rely upon an exemption) in order to continue to maintain and expand this part of their businesses.

Taking ***France*** as an example, UK investment firms and asset managers will have to apply for a licence from the *Autorité de Contrôle Prudentiel et de Résolution* or the *Autorité des Marchés Financiers* in order to conduct regulated business with French clients after December 31.

Like the French, the ***German*** authorities have not introduced a temporary permissions regime for UK financial institutions and asset managers either, so the latter will have to apply for a licence from the German financial supervisory authority BaFin (Bundesanstalt für Finanzdienstleistungsaufsicht) in order to provide banking and investment services to German clients post December 31. The application can be made by the UK firm's existing German branch *(which is converted to a subsidiary during the process*) or through a newly established German subsidiary. However, it normally takes between six months and one year for BaFin to process an application, depending on the complexity of the business the firm intends to conduct and the comprehensiveness of the documents submitted with the application. Any outsourcing arrangements with a UK-based parent or affiliated companies will be subject to enhanced scrutiny.

*UK and EU negotiators said they remained some way off reaching a post-Brexit trade agreement, following the latest round of negotiations in London**.** UK chief negotiator David Frost said there were "*considerable gaps*" in the most difficult areas, but a deal could still be reached in September. He warned that both sides must face the prospect of no agreement being reached, given the distance on reaching level playing-field terms for trade, and fisheries, but he later briefed Tory MPs that he believed the UK government would get 60 percent of what it wanted from a trade deal. He added: "*Despite all the difficulties, on the basis of the work we have done in July, my assessment is that agreement can still be reached in September, and that we should continue to negotiate with this aim in mind*."

The next formal negotiating round was scheduled to begin in Brussels on August 17.

His EU counterpart Michel Barnier said both sides were still "*far away*" and time was running out. Speaking after the latest talks, he said a deal was "at this point unlikely" unless the UK changed its stance over fisheries and post-Brexit rules on competition. He said the UK had not shown a "*willingness to break the deadlock*" in these areas, and the time for answers was quickly running out.

The main sticking points for the negotiators remained: fishing rights, *level playing field* rules – including strict limits on state aid for business; supervised environmental and employee protection on trade and commerce from January 1 and the role of the European Court of Justice, though apparently, both sides may be willing to give ground on the latter issue.

The EU will introduce thorough border controls between itself and the UK from January 1 next year, regardless of the outcome of the trade talks, warned M Barnier. This was despite the UK's plan not to impose full controls on EU exports to the UK until July 1 next year. Trade secretary Liz Truss triggered a row after claiming that the government's plan not to operate full border controls on goods until next July could encourage smuggling if UK ports were not ready to carry out checks. She said in a potential no trade deal situation after December 31, the UK's plan to give temporary precedence to EU trade risked breaking World Trade Organisation rules. Ms Truss told senior Cabinet ministers that if EU tariffs were applied, by default, to all goods sent to Northern Ireland, the future of the Union could be threatened. This was because digital delivery of the dual tariff system was risky. HMRC planned to apply the EU tariff to all imports into NI, by default, from January 1.

More than 60 percent of UK businesses, especially SMEs, have made no preparations for the end of the Brexit transition period, said the Institute For Government think-tank. "*Firms reeling from the economic consequences of the pandemic are poorly placed to prepare for Brexit: in many cases, they're in a worse position than in the months leading up to the potential no-deal in October 2019. As the government's own data shows, the majority of firms have not even begun to prepare,"* it said. This was confirmed by an Institute of Directors survey which showed that almost half the 1,000 company directors polled said they were unable to prepare now for the changes needed from December 31. Almost 70 percent of respondents said that securing a trade deal, rather than crashing out of the EU on World Trade Organization (WTO) terms, was important for their own company.

The government launched a *Get Ready for Brexit* campaign. A 90-page draft of the new border arrangements, "*The Border with the European Union, Importing and Exporting Goods,"* explained that businesses trading with the EU would need to prepare for customs declarations, which had not been required since 1993, when the single market brought down trade barriers. New inland customs clearance centres and border control posts were likely be built to alleviate congestion in ports including Dover, Portsmouth and Holyhead. New VAT and excise duty arrangements will apply, with checks to confirm the ID of the driver and that the cargo matches the paperwork provided.

However, Brussels confirmed that EU based finance houses can continue to use London's clearing houses, *on a temporary basis*, for currency and bonds trades, if the trade talks break down. However, this offer may not be extended to other financial services, which will come under the *equivalence* regime rules.

M Barnier told a House of Lords committee that the EU was well prepared for the UK leaving both the *customs union* and the *single market* at the end of the transition period. He said that every item imported into the EU from the UK would be checked from January 1, whether or not a trade deal between the two emerged in the coming months. More than 2,000 extra customs officers had been recruited mainly in those EU states interfacing directly with the UK on established trade and travel routes to cope with the much increased levels of checking imports into the EU, added M Barnier.

The EU leaders' summit on October 15 looked like the *last chance saloon* for a bare bones trade deal. Michael Clauss, German ambassador in Brussels, predicted that the trade talks would become the EU's main political focus in September and October: "*Is a deal possible? Yes, definitely. But I think it also means that UK needs to have a more realistic approach*," Clauss told an event hosted by the European Policy Centre think tank. "*I think you cannot have a full sovereignty and, at the same time, full access to the internal market.*"

EU duties applying to third countries on fish products are high and if the EU refuses duty free access to the UK for fish products (*as it has for Norway*), UK fishermen may lose the benefit of their potentially increased fishing opportunities.

Mr Frost said that the UK's future ability to deviate from alignment with the EU was the main point of Brexit, but M Barnier noted that Mr Johnson had agreed only six months previously to stick to the EU's state aid rules and current social protection and environmental regulations after the transition period. The recent Boohoo Leicester clothing sweat shop scandal cannot have made things any easier for the UK negotiators on this issue. The mood soured again when an article in *The Telegraph,* house newspaper of BoJo's government, called for the sacking of M Barnier.

*The City learned that the shares in Vantage Towers, in the planned £18bn Vodafone mobile towers flotation, would be listed in Frankfurt and not in London.

***China:** **Alibaba**'s billionaire founder and employee share ownership fan Jack Ma is reportedly floating part of his second company, **Ant Group,** shortly for almost $200bn, which would make it the largest float anywhere this year. The mobile phone payments company has one million users, mostly in China and is the market leader in China's digital payments industry. The company is known for running **Alipay**, one of China's most popular mobile payment systems and has expanded its reach into everything from wealth management to micro-loans. It sells financial technology products to enterprise customers too. E-commerce giant Alibaba has a 33 percent equity stake in Ant Group, which enjoys financial support from its own employees, many of whom hold shares in the Group. After the partial float, Ant Group will have dual listing on Shanghai's Star Market and in Hong Kong. Mr Ma, a former teacher of English, stepped down as executive chairman of Alibaba last September.

***France**: The world's third largest glass packaging company, **Verallia,** scored a big hit with its fifth employee share offer, which attracted 3,300 participants - a 42 percent take-up rate among eligible employees- in eight countries in which it operates.

The bottle and pot makers' shares were offered to employees at €18.87 each, a discount of about 20 percent to the mid June market price. In all, the employee participants invested more than €20m into their company. They now hold 3.4 percent of Verallio's issued capital, either directly, or through its FCPE (*Fonds communs de placement d'entreprise),* which are mutual long-term investment funds.

***Germany:** Dusseldorf based multinational **Henkel,** which owns innovations, brands, and high tech in adhesive technologies, beauty care, and laundry & home care, has operated an employee share plan (ESP) for almost 20 years. For each euro invested in 2019 by an employee (limited to four percent of salary up to a maximum of €4,992 per year), Henkel added 33 eurocents. About 12,500 employees in 58 countries purchased Henkel *preferred* shares under this programme in 2019. At year-end, 16,000 employees held 2.5m shares in the ESP securities accounts, representing 1.4 percent of total preferred shares outstanding. The lock-up period for newly acquired ESP shares, now trading at €86 each, is three years. Participation in its ESP has been very profitable for its employees. Those who invested €100 monthly in Henkel shares from the start of the programme held portfolios valued at *€84,756* at the end of 2019 (assuming reinvestment of the dividend before tax deduction). This represents an increase in value of around *292 percent* or an average yield of around 9.5 percent annually.

Henkel's global Long Term Incentive (LTI) Plan 2020+ was introduced in January 2017 to replace the previous Global LTI Plan 2013, which was designed as a share-based remuneration scheme with *cash* settlement. However, the Global LTI Plan 2020+ provides for share-based remuneration settled with preferred Henkel *shares.* These treasury shares are granted on condition that members of the plan have been employed for four years by Henkel in a position senior enough to qualify and that they are not serving notice during that period. In addition, an *out-performance reward*, which grants treasury shares based on the achievement of target figures established in advance, was fixed at the beginning of the four-year medium-term plan. The employees are not granted the treasury shares until the four-year performance measurement period has ended, but may then dispose of them at will.

*Technology firm **Fujitsu** said it would halve its office space in **Japan** as it adapts to the "new normal" of the Covid-19 pandemic. Its *Work Life Shift* programme will offer unprecedented flexibility to its 80,000 Japanese employees. Staff will be able to work flexible hours, and working from home will be standard wherever possible. The announcement followed a similar move in May by social media platform *Twitter.* Under the plan employees will "*begin to primarily work on a remote basis to achieve a working style that allows them to flexibly use their time according to the contents of their work, business roles, and lifestyle*". Fujitsu said the programme would allow staff to choose where they worked, whether that was from home, a major corporate hub or a satellite office. The company believes that that the increased autonomy offered to its workers will help to improve the performance of teams and increase productivity.

US: *Raise taxes now! Some of the world's richest people are urging governments to raise taxes on themselves and other wealthy individuals to help pay for measures aimed at tackling the pandemic. A group of 83 multi-millionaires and billionaires called for permanent change in personal tax rates: "*As Covid-19 strikes the world, millionaires like us have a critical role to play in healing our world*," it says. Signatories include heiress Abigail Disney and Ben & Jerry's co-founder Jerry Greenfield. Their letter said: "*No, we are not the ones caring for the sick in intensive care wards. We are not driving the ambulances that will bring the ill to hospitals. We are not restocking grocery store shelves or delivering food door to door. But we do have money, lots of it. Money that is desperately needed now and will continue to be needed in the years ahead, as our world recovers from this crisis.* There are more than 500,000 people worldwide, including 14,400 in the UK, with fortunes of more than $30m (£26.5m), concluded a *Knight Frank* study.

*The estimated personal wealth of **Amazon** founder Jeff Bezos climbed $13bn (£10.2bn) in *one day* to $189bn after Amazon's shares rose strongly again to $3,182 each. Mr Bezos owns around 11 percent of the company. The fortune of the second richest man in the world, Bill Gates, climbed to $114bn this year, reported *The Telegraph.* **Facebook**'s Mark Zuckerberg is now worth $90bn.

*Executives at a Denver hospital received substantial bonuses while employees were asked to volunteer for pay cuts. **Denver Health** paid $3.6m in bonuses to administrators in April as the pandemic pummelled the organisation, an investigation by *9NEWS Denver* revealed. Denver Health's ceo Robin Wittenstein received $230,275 on top of her $967,155 salary, according to the report. Seven others who received large bonuses had base salaries of more than $500,000. The payments were made one week *after* Wittenstein pleaded in an email to employees that they consider volunteering for pay cuts, reductions in hours, or furloughs in order to help the company stay afloat, according to 9NEWS Denver. "*The goal is to reduce our total salary expense without the need to lay off employees or implement mandatory PTO/furloughs,"* Wittenstein wrote. Most bonus payments were for amounts between $10,000 and $20,000, according to documents viewed by *9NEWS Denver*. Dr Bob Phillips, executive director of The Center for Professionalism & Value in Health Care, said the "choice to give bonuses to leadership at this time, even if it's based on past behaviour or past outcomes" was "frankly unconscionable."

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