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it's our business

newspad of the Employee Share Ownership Centre

EMI soars in popularity and cost to taxpayers

The share options based Enterprise Management Incentive (EMI) tax approved scheme soared in popularity among SMEs – and its cost to UK taxpayers – during the 2018-9 fiscal year, according to the *newspad* analysis of the annual statistics from HMRC.

In the year ended April 5 2019, a record **12,410** UK companies were using EMI, 1,110 more (an almost ten percent increase) than in the previous fiscal year. As a result, the total tax relief (income tax + NICS) obtained by EMI participants rose by a heady 32 percent to £370m in 2018-9 from £280m in the previous fiscal year.

Taking a broad perspective, HMRC's latest share scheme statistics show conclusively that usage of three of the four UK tax advantaged employee share schemes remains on a plateau. Of the 14,420 companies using one or more of these four schemes during the fiscal year 2018-9, all but 2,010 were using EMIs.

For the first time, the discretionary EMI scheme has overtaken the all-employee Share Incentive Plan (SIP) as the UK's most expensive tax approved share scheme. The SIP cost taxpayers £260m in relief from income tax and NICs, while SAYE-Sharesave cost taxpayers only £210m in that tax year.

By contrast, the other discretionary approved scheme – Company Share Option Plan (CSOP) – cost taxpayers just £35m, largely because the options awarded to employees must be at the then market value – no discount is allowed. The other key reasons why CSOP's annual bill to taxpayers is so low is that not more than £30,000 worth of options can be offered to an individual employee at any one time, so CSOP gains are clearly limited, and because not as many companies issue CSOP options every year However 15 years ago, when CSOP was much more popular, it was costing taxpayers almost £200m a year.

The *average* level of gain by the 8,000 EMI option holders who cashed in during 2018-9 to which income tax and NICs relief applied was *£83,260* per head, but it must be remembered that holding EMI options is a risky business. No company with a gross asset value of more than £30m can offer EMI options, nor can companies who operate in certain sectors, such as banking, farming, legal services or property development. Many EMI option awards are conditional upon an exit or a change in control of the company so, if

From the chairman

The European Commission plans a new initiative next year in support of employee share ownership, according to an internal note to senior Commissioner Dombrovskis. His chef de cabinet is to be responsible for the work, which is excellent and unexpected news.

Historically the Commission's involvement was through Employment Affairs, which sought information from member states who were typically unaware of employee share ownership through multinational companies. As a result the focus was on other kinds of employee financial participation with which member states were familiar.

The Centre with its strong multinational membership is uniquely well-placed to help the Commission on its new and welcome path. For some time there has been concern outside the UK about member states' ability to support start-ups and I know that representations have been well received.

The Commission's plan is part of a wider initiative on financial markets whose individual recommendations are interdependent. I welcome an important step forward.

Malcolm Hurlston CBE

there is no exit, they get nothing from their options. Furthermore, inevitably, some of these young SMEs go bust, in which case, again, the EMI option holders get nothing.

There is a stark illustration of this in HMRC's annual update table, which reveals that whereas between the years 2015-19 the number of companies where employees were *granted* EMI options was almost three times as many as the number of companies where employees actually *exercised* their EMI options. Clearly some of these EMI option holders in April 2019 were still waiting for an exit event, but others were already sunk, either because their companies had collapsed, or they had left their employer to seek new opportunities.

HMRC's latest statistics show that the number of ***companies*** using the SIP rose again slightly in 2018-9– from 810 to 840, though that was 30 companies fewer than who used the SIP ten years previously. Of these companies, there were 470 where employees were either awarded SIP shares, or bought Partnership shares. Where SIP plans appropriated shares, the *type* of shares acquired is significant: In 2018-9, Partnership shares *(which employees have to* ***buy*****)** were appropriated in 390 plans, matching shares in 250 plans, dividend shares in 220 plans and finally free share awards to employees in 130 plans. BOGOF plans (*Buy one or two shares and get one free)* remain popular.

Meanwhile, SAYE's following stabilised at 490 companies in 2018-9, though this was 100 fewer than a decade ago. Of these companies, 290 granted SAYE options to their employees in that tax year, with an initial share value of £1.6bn.

The number of companies using CSOP fell slightly- from 1,200 to 1,180 in the 2018-9 fiscal year, but only 310 of these actually granted any CSOP options to their employees during the 2018 -9 fiscal year.

Looking at EMI in detail, there were 1,550 SME companies in 2018-9 where, collectively, 8,000 key employees exercised their EMI options, in so doing making a total gain of £760m, of which £680m qualified for tax relief. This was up considerably from the previous year when there were 1,420 companies where 7,000 employees exercised their EMI options, making a total gain of £600m, of which £530m qualified for the relief.

Limited Covid Sharesave disruption

The Covid-19 pandemic disrupted this year's round of SAYE-Sharesave invitations, though not by nearly as much as had originally been feared, **YBS Share Plans** revealed in an **Esop Sofa** webinar. Among the long YBS list of Sharesave clients, 13 scheduled invitations to employees have been postponed during the pandemic, while nine others have been cancelled, said Bryony Padgett-Jones, business development manager: "*Companies are still offering both SAYE and SIP (Share Incentive Plan), but there has been a slight air of uncertainty*," Bryony told an online audience of 70. "*We've had these postponements and cancellations of invitations, though a few of these have been due to takeovers, so it's not just the pandemic*."

Darren Smith, corporate relationship manager at YBS Share Plans, who led the discussion, said: "The pandemic is not the end for equity based share plans, which are part of the conversation about how companies cut costs, as equity plans are cheaper for them than handing out cash. So, there are opportunities for share plans to become even more important than they have been." He added: "Employee equity offers a bigger opportunity for increased reward longer term. Companies look at these plans as unifiers (especially if they've been part of a takeover or merger process) and they know that stopping employee share plans doesn't look great at a time when we are all trying to work together."

The webinar, entitled *What are today's big employee share ownership questions?* was hosted by the **Z/Yen's Financial Services Club** and chaired by Alderman Professor Michael Mainelli, executive chairman of the **Z/Yen Group**. The professor asked whether plan administrators would pull the plug on some deeply underwater Sharesave option schemes. Bryony said that in the majority of such cases, clients were not withdrawing the schemes, but instead allowing them to mature, hoping that in the subsequent six-month exercise window post maturity, market share prices would recover. YBS had thought there would be more employee demands for SAYE savings refunds than was the case, she added.

Relatively speaking, the SIP was a quiet backwater while all this had been going on in the Sharesave sector, with partnership and matching share arrangements carrying on normally, although one client had paused its SIP, said Bryony. What YBS had witnessed was an increase in the number of SIP employee participants making fixed lump sum contributions, to take advantage of record low share prices.

Newspad's June edition lead story, about Equiniti

and others urging the government to install a *Look Back* feature, to eliminate the menace of widespread underwater SAYE options, was well received, by the Eso sector, revealed one of the sofa guests, Emma Parker of Tapestry Compliance: "*Look Back* is really innovative and an incredibly useful idea" she said. On cue, the FTSE100 index plunged more than 250 points in a few hours during June 11 to below 6110, about 20 percent adrift of where it had stood in mid-May, putting more Sharesave options in danger of drowning. Days later, the FT100 dipped briefly below 6000, before bouncing back above 6300 and then down again in wild swings late last month.

Both Darren and Emma urged the government to change SAYE-Sharesave rules, so that in future only three year savings contracts should be offered, as five year contracts were no longer realistic, they said.

Completing the sofa team was trustee Ross Crick, manager within Centre member VG Group's wealth structuring team, who forecast that the sector would be seeing more employee benefit trusts set up shortly, mainly for warehousing shares. He believed that now was the time for the Company Share Option Plan (CSOP) to make a comeback, though it needed to be made more attractive for employees to enjoy having a stake in their business.

Emma praised the *'Shares For Salary'* campaign, led by Jeremy Edwards, share schemes partner at Centre member Baker McKenzie. (*For more on this, please read the Feedback column further into this edition).*

A second Centre webinar entitled: *How to Ensure All-Employee Share Plans Remain Relevant* was led by Equiniti's Graham Bull and Jennifer Rudman, who discussed how best to improve both SAYE-Sharesave and the SIP in order to make them more attractive to employees generally. Graham said that SAYE was one of the best and safest Eso products in the market place because employee participants could always get their contract savings payments back if the scheme's option price was underwater at maturity. Many of those companies which had delayed launching a new Sharesave invitation due to the pandemic were now "back in the pipeline," he said. BT had scored a 30 percent rise in the employee participation rate for a recent Sharesave launch, while amounts invested in the savings plan had increased by 47 percent, Graham added. Jennifer said that while all-employee schemes faced considerable challenges, on the positive side, many IPOs (*floats*) now added in an Esop as a semi standard feature. There were NICs savings to be made in a SIP; employee payment holidays had been extended; many new Sharesave schemes offered a shorter savings period and more were using the maximum (20 percent) option discount to market price.

She suggested that the government should adopt an 'opt out' (*inertia)* principle to companies and employee share ownership: i.e. if companies didn't want to install an Eso plan in their business, they should have state the reason(s) why. Graham said that government could *nudge* companies to install Eso, just as in the same way there was a suggested level of employee savings in company pension auto-enrolment schemes. Both said that the key reform for SIP was to apply the maximum tax relief allowed from the end of the third year, rather than the fifth year, as at present. Such a move would bring SIP into line with SAYE-Sharesave, where full Income Tax and NICs relief applied from the end of three year schemes. Graham said that five year schemes should be phased out because employees rarely stayed with the same employer five years these days.

In order to make all-employee plans a success, employees had to be involved in the communications themselves, added Graham: "*We do need a few tweaks to these schemes and support from the chancellor to be able to do so."*

Jennifer supported the *Shares For Salary* campaign by revealing that a lot of companies were either on the point of paying employees partly in shares, *instead of 100 percent cash,* or they were already actually doing so. She admitted however that there was a risk that too much could be invested in one company via share schemes (though SAYE participants were protected), so the situation in SIP was watched carefully by administrators like Equiniti. Graham said that employee participants needed to check how many shares they owned and there were ways of avoiding *all eggs in one basket* by, for instance, moving some employee shares into ISAs.

Sharesave 'Look Back' feature campaign:

For every SAYE-Sharesave or CSOP scheme which is ditched because the option strike price is above the market value of the share at maturity, there is a

Treasury saving because the scheduled relief is voided too. In present circumstances, if the situation persists and many such schemes are scrapped, there will be a 'saving' of millions for the Treasury in terms of anticipated tax relief which falls away. Why shouldn't the Eso sector

recapture the equivalent 'lost' tax relief through adoption by the Treasury/HMRC of a Look Back feature in SAYE-Sharesave?

EVENTS

Jersey 2020 – re-scheduled to September 25 2020
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 hiatus in Brexit negotiations, corporate governance, the international reach of trustees and the growth in employee ownership trusts, it has never been more important for those interested in Eso schemes and trusteeship to be updated 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 Foreign Office minister concerned with the Overseas Territories, will be a 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.
Delegate prices: Esop Centre/STEP members: **£375**, Non-members: £480. To reserve your seat, email juliet_wigzell@zyen.com or call the Centre on +44 (0)20 7562 0586.

Fourth British Isles share plan symposium
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 an impressive Central London location. The programme will be as advertised 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 re-run the symposium this autumn, however many member accounting, consultancy and legal groups are refusing to allow their London premises to be used for public conferences and other events until next year when, hopefully, the pandemic will have receded. Our thanks to **Ocorian** for sponsoring the symposium, which offers the best of latest guidance on employee equity schemes for companies, both large and small. The presentations will be delivered by many of the best practitioners in their respective fields of expertise. For all enquiries, contact Juliet at juliet_wigzell@zyen.com or call +44 (0)20 7562 0586. Admission prices will remain as advertised.

Webinars
***Awarding shares to employees in a Covid-19 world:** How to make good use of the government's Share Incentive Plan (SIP) **July 9** at **10:00am.** The SIP was introduced in the Finance Act 2000, alongside the Enterprise Management Incentive. It comprises four modules: free shares, partnership shares, matching shares and dividend shares. William Franklin, partner at Pett Franklin, reveals how to make good use of the SIP in a post-covid-19 world.
***Share Valuation: the wisdom on price-setting for your employee share schemes July 21** at **11:00am.** Share schemes expert David Craddock will deliver the fourth in his series of popular instructive talks for the Centre on the practicalities of setting up and running an employee share plan. This time his focus will be on share valuation.

MOVERS & SHAKERS

Please note that the email address of *newspad* editor **Fred Hackworth**, for all Centre communications, has changed to: fred_hackworth@zyen.com. 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 above e-coordinate from now on when sending contributions/information for publication in one of our monthly editions of newspad.
Martin MacLeod left Deloitte to join DLA Piper as a legal director in its growing remuneration and incentives practice. "It's an exciting time to be joining, as we have ambitious plans to develop the practice," Martin told *newspad*. "It's also a strange time to be joining, as I am still sitting at exactly the same desk in our spare bedroom! He has updated his contact details in LinkedIn (e-mail address is martin.macleod@dlapiper.com; telephone number is 020 7796 6216).
Nigel Mills, director, is celebrating 35 years at

Centre member MM&K, executive compensation & private equity advisers, as well as employee share plan specialists. One of the Ms is short for Mills!

Mick McAteer, former board member of the FCA and FSA, is celebrating 13 years at the helm of the Financial Inclusion Centre which he founded.

Centre member **SANNE Group,** which provides alternative asset and corporate business services worldwide, has appointed Jens Grüneklee to the role of director of business development, based in its Luxembourg office. This jurisdiction, home to a large investment fund business, includes Sanne's interests in private equity, private debt & capital markets, real assets and hedge funds.

UK CORNER

Sharesave launch triumph for Smiths

Smiths Group triumphed as 54 percent of its eligible employees subscribed for its annual SAYE-Sharesave launch offer, despite take-up fears due to the pandemic. Normally, the group gets around 650+ employees (*about 45 percent of those eligible*) taking up its Sharesave offer, but this latest take-up – almost ten percentage points higher than average – was impressive by any yardstick. Total employee savings for the new contract reached £176,000 per month - a 56 percent increase from last year. As this year's launch was scheduled for April, during the peak of the pandemic, Smiths Group faced two big decisions - how to maintain good engagement with many employees - now working remotely or on new shift patterns - and whether now was the right time to launch What with the UK economy in crisis and some employees worried about their household income, the fear was that employee take-up might suffer. Smiths Group decided, however, that by continuing with the launch, it would increase motivation and engagement amongst colleagues, and re-enforce positive messaging about the group's future prospects, reported *EQ Boardroom*. "*The major challenge was then how to quickly adapt their comms approach to accommodate the new working environment. Typically, Smiths Group would run comms, including internal emails, workshops and drop-in sessions, which had to be adapted to suit the current situation, meaning that workshop and drop-in sessions were replaced by webinars in the morning, lunchtime and afternoon, catering for the majority of colleagues, including home-based workers, those on shift patterns and those still working in factories - attracting more than180 participants for the webinars*." Laura MacAndrews, assistant company secretary at Smiths, said: *"Planning for our annual Sharesave launch in April normally begins at the start of the year and so when the potential impact of Covid-19 became apparent, we had already progressed. We discussed internally whether or not it was appropriate to continue to offer the scheme for 2020, but agreed that opportunities for colleagues to feel engaged with, and supported by, Smiths, were more important than ever. We are delighted with the take-up, particularly in the circumstances. It demonstrates the value our colleagues place in the scheme, and an understanding of the potential opportunity it offers them."*

No extension to share scheme reporting deadline

HMRC refused to postpone the **July 6** deadline for the annual reporting of UK employee share schemes and employment related securities (ERS) despite Covid-19. HMRC sugared the pill by stating that if penalties were imposed, companies and/or their advisers could appeal on the basis of the pandemic being the reason for late filing, but late filers would have to explain exactly how Covid-19 had affected them. Share plan sponsor companies and advisers need to: *complete end of year reporting for share plans and arrangements *register all new share plans and arrangements on the HMRC online system *self-certify new tax-favoured share plans.

Those who miss the deadline will be subject to automatic penalties and will lose the tax-favoured treatment of certain share options. Penalties will apply: *immediate £100 penalty for missing the deadline of July 6 *additional £300 if filing is three months late *additional £300 if filing is six months late. Then there will be a £10 per day penalty if the filing is more than nine months late and HMRC decides to get tough. There is a penalty of up to £5,000 for a material inaccuracy in a return which is not immediately addressed. If any reportable events have taken place in tax-favoured plans or non tax-favoured plans and

other arrangements during the 2019/2020 tax year, share plan sponsors need to report them. *Arrangements* include the acquisition of ERS by employees and directors generally, not just under a formal plan. Reportable events include: *grant of options, *the exercise of options *certain lapses of options *the acquisition of shares and *events under the restricted shares legislation and anti-avoidance rules. Plan sponsors need to register all new employee share plans and arrangements online. They will need to self-certify that any new tax-favoured share plans (EMI, CSOP, SIP and SAYE) meet certain requirements. If plan sponsors have previously registered a plan or arrangement, but have no reportable events for the 2019/2020 tax year, they must submit a '*nil return'* to avoid automatic penalties arising from non-filing.

The *Nitty Gritty*: Plan sponsor companies and advisers must take screenshots at all stages of end of year reporting and for all other activity on the HMRC online site (e.g. the notification of EMI option grants) for their records. EMI option agreements must include details of any restrictions attached to the shares subject to the option. Note that if there are articles of association/shareholders resolutions or constitution as part of a funding round, a summary of restrictions will need to be updated for new EMI options: *EMI option agreements must include a *working time declaration*, *Check that the company is still fully compliant with current EMI rules when granting new EMI options *If options have been granted over shares in a non-UK company to employees of a UK subsidiary, it will be simpler for the UK subsidiary to be responsible for the online registration, self-certification and end of year reporting. *Check the option plan rules and option agreement carefully when employees are leaving employment, to ensure that the correct treatment is followed and that the tax implications are appreciated. *Consider the impact of furloughing employees on their share/ option awards (particularly EMI options). HMRC has recently given guidance. **This guide to share plans reporting was published by lawyers Taylor Wessing.*

Pandemic furloughs and tax risk for EMI

As this edition went to press, HMRC announced that individuals who are furloughed or who have their working hours reduced below the current statutory working time requirement for EMI as a result of Covid-19 will **retain** the tax advantages of the scheme. Those participating in an EMI scheme are required to meet the 'working time requirement'. This means that the employee's time committed to the company must be equal to or exceed the statutory threshold of 25 hours per week or, if less, 75 percent of their working time. Where employees are furloughed, working reduced hours or taking unpaid leave, they may not be able to meet the committed working time requirement, resulting in a 'disqualifying event'. A disqualifying event means the options must be exercised where permitted within 90 days for tax relief to apply.

HMRC has introduced a time-limited exception to the disqualifying event rules so that participants are not forced to exercise their options much earlier than planned. It accepts that, from March 19 this year, if an employee with share options granted before that date 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 said: "This measure makes sure that EMI participants can maintain the tax advantages and reliefs as if they had continued to work for their employer as per their employment contract during the Covid-19 pandemic."

The latest employment related securities (ERS) bulletin did confirm that the tax status of SAYE, SIP and Company Share Option Plan (CSOP) arrangements during the pandemic remain as before.

HMRC's guidance confirmed that: *All employees with a savings contract in place on June 10 can delay the payment of monthly contributions beyond the currently available 12 months where the delay is due to the impact of the pandemic. A postponement of contributions puts back the year maturity date for the contract by the total number of months missed. However, SAYE contributions can continue to be deducted from payments received through the Corona-virus Job Retention Scheme (CJRS). Participants unable to make monthly contributions from their salary, due to the pandemic, can temporarily pay by standing order.

*HMRC's update confirmed that payments of CJRS to furloughed employees can constitute a salary, and SIP contributions can continue to be deducted. SIP participants already permitted to stop their deductions from their salary, however, will not be allowed to make up missed deductions if they stop due to the pandemic. HMRC confirmed that for the purpose of the grant and the holding of CSOP options, the CJRS does ***not***

change the legal status between employees and their employer and they continue to be eligible for CSOP irrespective of whether they have been furloughed or not..

"Where HMRC agrees on valuations, the options need to be granted within 90 days. Covid-19 may lead to situations where there have been delays in granting EMI options which takes people over the 90 day limit. Provided that there has been no change that may affect an appropriate value then: HMRC accepts that: *Any EMI valuation agreement letter already issued, where the 90 days expires on or after the March 1 2020, can be automatically treated as being extended by a period of 30 days *Any new EMI valuation agreement letter issued on or after March 1 2020 will be valid for 120 days."

Employee share stake crucial to RM's future

As Czech billionaire Daniel Kretinsky's doubling of his stake in **Royal Mail (RM)** to 8.2 percent set off rumours of an imminent takeover bid, attention shifted towards the huge 11.46 percent chunk of the equity held by employee shareholders. Of this, a handsome 7.6 percent is held within RM's Share Incentive Plan (SIP), while a further 3.86 percent is held by the RM employee benefit trust (EBT).

The question arises: *How would RM's EBT trustee vote the shares it holds on behalf of employees were Kretinsky to launch a takeover bid? On the one hand, RM employee shareholders would gain financially if he bid at, say, a 20 percent premium to the current depressed market price, but on other hand, many employees would fear for their jobs were he to win control and that is the dilemma the trustee would face.*

Critical too would be the stance of the Communication Workers Union (CWU) which represents around 135,000 postal employees, many of whom are employee shareholders. Would it recommend that its members hold onto their shares for the time being, in preparation for a *poisoned pill* defence against such a takeover bid?

Within weeks, Kretinsky upped his stake in RM (via his vehicle Vesa Equity Investment) from an initial four percent to 8.2 percent by hoovering up Royal Mail's shares in the market. Some fear that RM's profitable parcels service would be sold off, should Kretinsky gain control. Such a development would place the loss-making and declining letters service in a parlous position, threatening thousands more postal service jobs. RM jumped into defensive mode by announcing that 2000 managerial jobs are to go - mostly back-office roles, many in finance, commercial and IT. RM's shareholder register shows Schroder Investment Management at the top, with 14.8 percent of the equity, followed by Vesa, then the SIP, then RWC Asset Management (*a London based hedge fund with $14bn of assets under management*) which holds 5.2 percent and then the EBT. The double digit level of employee shareholdings in RM is impressive, given the maturity in October 2018 of its first five year SIP, when some postal employees sold their free shares. RM said that the planned job cuts, which it wants to make by March 2021, would save £130m on 'people costs.' It did not pay a dividend to shareholders in 2020 and said that it would not pay a dividend in 2021 either. In the year to March 2020 it made a pre-tax profit of £180m, down from £241m the year before.

Coping with Covid: members' reactions (3):

Clients have made share plan awards mostly in tune with their normal grant cycles although some of these were later than usual owing to a delay in the company announcing its results, reported Mahesh Varia, partner and head of incentives & remuneration, at legal group **Travers Smith.** "*Where the company's share price has seen a significant dip due to the pandemic, we have advised clients on how they can avoid windfall gains by using a pre-pandemic share price in setting award levels, exercise prices and performance conditions.* Although we aren't aware of any clients who have chosen to grant LTIP awards now, but impose performance conditions later on, our experience is that they are very conscious of the need to monitor award values going forward. Given the continuing uncertainty, we see that most companies favour a *wait and see* approach with a view to using their discretionary powers to reduce vesting levels if need be.

"In spite of the pandemic, we haven't seen a delay in the adoption of new plans and a number of international employee share offers have been launched successfully – albeit these have been undertaken by private companies. There has been a lot of activity from company re-organisations and we have been busy advising on the share plan implications of these. Although we have told clients of the choices open to those SAYE and SIP participants experiencing financial hardship, we do not know how many (if any) employees have actually opted for payment holidays under savings contracts or reduced their partnership share purchases.

"Our advice has been sought over another Covid-19 related area - waivers of salary and/or bonus by executives. In some of these cases, the company has wanted to make a donation to charity or grant the executive a share-based award. Finally, some of our clients have sought to help their employees through the crisis by creating hardship funds through their employee benefit trusts," added Mahesh.

State should invest directly in SMEs, says report
The government should buy £15bn worth of shares in UK SME businesses in order to sell the shares later on to the public, urged a *Social Market Foundation* report. Its author, Tory MP Bim Afolami, said that such an investment would help SMEs recover from the pandemic. His proposed recovery fund would be floated on the London stock exchange. *The report said it would make sense to offer some of the state-bought shares to NHS employees and to younger employees at discounted prices.* Mr Afolami said the £15bn could be borrowed and invested, using the government's British Business Bank. *Statistics released by the UK Treasury in mid June showed that almost *nine million* employees were having 80 percent of their monthly pay (up to a maximum of £2,500) covered by the government's furlough scheme, for which taxpayers have forked out £19.6bn so far. The scheme was originally intended to last until the end of July, but has been extended until the end of October. The estimated overall cost of CJRS has been reduced from £84bn to £60bn, as employers put more lower-paid and part-time employees on furlough, said the Office for Budget Responsibility. The CJRS will only accept those employees already furloughed for a minimum of three weeks by June 30, 2020. Beyond that date, no new entrants will be permitted. This means that the employee must have commenced furlough no later than June 10 to satisfy the minimum three week period requirement. For more info, read the **Abbiss Cadres** Guide to the Coronavirus Job Retention Scheme (https://abbisscadres.com/guide-to-coronavirusjob-retention-scheme.html). In addition, a scheme aimed at helping the self-employed has had *2.6m* claims, totalling £7.5bn. A further £51bn was given by the government to companies via various schemes - in the form of loans, to help keep them going, while £10bn more had been pumped out to companies as grants and yet more by way of business rates relief.
*First Future Fund data revealed that 533 start-ups had applied to the UK government support scheme by early June, when only 53 had received a convertible note from the government, but the British Business Bank, which is administering the loans, didn't say how many applications had been rejected.

Roadchef: HMRC's wall of silence
HMRC is using exemptions to the Freedom of Information Act (FOIA) to stop former Roadchef employee Esop participants from finding out how the 20 year scandal over their compensation rights is being handled by the tax authorities. This emerged after a website recorded the correspondence between Robert Holmes, a former Roadchef manager, who asked HMRC when he could expect payment of the High Court awarded compensation, via the Roadchef employee benefit trust. Mr Holmes told HMRC: "*I was a manager with Roadchef in 1998 when Mr Hill wrongly used employees shares to sell the company. I have waited now some 20 years for an employees payment share refund via the employees benefit trust, but find HMRC not willing to settle this matter quickly after stating they would again and again. Can you please give me an honest update on the current situation with this matter with yourselves and Capital Law representing Roadchef employees benefit trust?"*
HMRC told him that though it held "information within scope of your request," it is covered by an exemption at section 44(1a) of the FOIA, which applies when the information is prohibited from disclosure by another piece of legislation. In this instance, the Commissioners for Revenue and Customs Act 2005 (CRCA) *section 18* specifies how the department must treat information as confidential and when it may be released. To determine whether the exemption applies, we are required to consider two questions at section 23 (1) of the CRCA: *Is the requested information held in connection with a function of HMRC and does the information relate to a "person" who is identified, or who could be identified from the information requested?* If, as in this case, the answers to both questions is "*Yes*", then the statutory duty of confidentiality (at section 18(1) of the CRCA) means the information is exempt under the FOIA. It removes any possibility of disclosure under the FOIA on a discretionary basis. The term *person* includes legal entities such as companies, trusts and charities, as well living individuals.
However, critics point out that although a ban against HMRC revealing details of ***individual*** tax matters is necessary, it is hardly justifiable where a large number of claimants seek clarity over the *same* issue, as in the case of the ex Roadchef Esop beneficiaries. What the beneficiaries want

HMRC to tell them is whether or not they will be taxed on their various compensation pots, which is ***not*** the same thing as demanding details of their individual post tax (*if any)* payments. The beneficiaries' sense of unfairness in their treatment by HMRC is compounded by the strange relationship between it and its supposed ministerial masters in The Treasury. Uniquely, HMRC is responsible to no minister for the *way* in which it conducts its investigations.

Nominally, Treasury Financial Secretary, Jesse Norman MP fields questions about HMRC in Parliament, but has no operational control over the tax authority. An appeal by *Newspad* editor Fred Hackworth to Mr Norman for an update on the never-ending Roadchef compensation battle, vis a vis HMRC's role in it, went unanswered.

Don't ignore dividend shares

Companies which operate SIP for employees will know about the excellent tax benefits offered by this type of all-employee share plan, said Centre member, **Rm2 Partnership**. "*Ultimately, a SIP can deliver a zero tax rate for participants, making it the most tax efficient non-discretionary UK share plan. However, dividend shares are often the forgotten relation in the SIP dynamic*," explained Rm2. "It is not a requirement to offer dividend shares to employee participants, but they shouldn't be dismissed out of hand. Under a SIP, *if* dividends are paid, the employees are entitled to receive them as if they were shareholders (even though the shares are still held by the trustees of the SIP). Dividends may be received directly as cash (and they would be taxed as dividends in the hands of the employee in the normal way).

"Alternatively, the dividends can be reinvested in the acquisition of further company shares, which are known as dividend shares. That reinvestment is made without any tax deduction, and there is no requirement to disclose the details on the individual's tax return. The amounts of the dividend paid must be reasonable. HMRC will penalise companies which seek to place *excess* dividends in the hands of the employees, since this is regarded as avoidance of NICs."

The company operating the SIP can maintain some control over the process as it decides (*in the plan rules and the agreements with employees*) whether participants can choose to take their dividends as cash or shares, or whether participants *must* elect for dividend reinvestment. The dividend shares must be left

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in the SIP for three years otherwise income tax is due at the dividend rate. "However, there is no charge to income tax where the dividend shares cease to be subject to the SIP because the participant is no longer in relevant employment for *good leaver* reasons: e.g. injury, disability, redundancy, TUPE transfer, retirement or death. They include too a change of control by way of a general offer – which is a more narrowly defined provision than a conventional share purchase agreement. Provided the dividend shares are held within the SIP for whole three year holding period, there is no CGT liability when the dividend shares cease to be subject to the plan. Hence a taxable dividend can ultimately become a non-taxable dividend share. Dividend shares cannot be subject to forfeiture provisions (*the same position as for Partnership shares*). The rationale is that, as with Partnership Shares, the participant has *paid* for the shares (unlike free and matching shares) and therefore these shares should not be subject to forfeiture provisions. Dividends received by the SIP trustees on shares which have not yet been appropriated (*the shares are being warehoused in anticipation of being allocated as free, partnership, matching or even dividend shares*) are tax-free as long as the shares are appropriated within two, or five years, if the shares are not readily convertible assets. In conclusion, with dividend reinvestment, there will be an element of extra administration for the SIP." However, in terms of employee incentivisation alignment, Rm2 thinks that this provides plenty of *bang for your buck*.

Companies ignore large shareholder revolts

The alleged short-comings of the corporate governance code covering executive reward came to the fore in the wake of three recent cases in which the boards of major companies brushed aside shareholder anger at their agms.

Supermarket giant **Tesco** suffered one of the biggest ever shareholder revolts over executive pay, but the board said it would not be moved as the vote was only '*advisory*.' Investors representing 67.3 percent of the voted shares at Tesco's agm were against the remuneration report. The adverse vote came after the outgoing ceo Dave Lewis's total reward rose by more than a third to £6.42m last year. In his six years at the grocer he has received £29m. Shareholders objected to a late change to part of an executive pay plan, which handed an additional £1.6m to Lewis and £900,000 to fd Alan Stewart. The change involved removing online grocer Ocado

WHITE & CASE

from a comparator group against which Tesco's share performance was measured. Had Ocado remained in the benchmark group, the two men would not have qualified for the additional £2.5m payout in shares. Yet Tesco said in a statement after the hostile vote that it did not plan to make any immediate changes to its executive pay plan, claiming that a pre agm consultation had suggested investors supported the payouts. "*Following recent engagement on our remuneration report with a number of our larger shareholders, we have been reassured that the majority agree that the overall outcome of the 2017 [long-term bonus] award is proportionate given the outstanding turnaround delivered by management."* However, Tesco said it did recognise "*that a significant number of shareholders had concerns" with the decision to remove Ocado from the rivals list and would publish an update on its plans for the year ahead within six months*. City critics claimed the statement was a whitewash because, under the corporate governance code *Sin Bin* guidance issued by the Investment Association, Tesco is obliged to update shareholders on executive pay within six months after such a humiliating agm defeat anyway.

*Fashion retailer **Boohoo,** which is listed on the AIM junior market, struck back against its rebellious shareholders by promising its founders and other senior executives a collective ***£150m bonus***, on the sole criterion that its share price rises by at least two thirds over the next three years. The scheme could pay out £50m each to its founders Mahmud Kamani and Carol Kane, plus another £50m to be shared between other top executives. Stunned shareholders were told that Boohoo's new bonus scheme did not need shareholder approval, but that the board's adviser Zeus Capital had agreed that it was a "*fair and reasonable*" scheme. Yet one third of voting shareholders had given the thumbs down to Boohoo's executive remuneration report at the recent agm. Most of the protesters wouldn't swallow a £1m pay-out to ceo John Lyttle and salary increases of up to 30 percent to other senior

executives. Boohoo's share price has soared in the wake of more online buying of its brands such as *Nasty Gal* and *Miss Pap* due to the pandemic lockdown.

***Shareholders revolt over *top hat* pensions:** More than a third of voting shareholders at the agm of Bradford-based supermarket giant **Morrisons** opposed the company's remuneration policy. Investor advisory group ISS had recommended shareholders vote against the policy because the annual pension cash contribution rate of 24 percent for ceo David Potts and coo Trevor Strain was not aligned with the five percent received by most of the company's workforce. Morrisons said that almost 35 percent of votes cast at the agm were against the resolution to approve the remuneration policy, with 65.2 percent in favour. "*The board thanks shareholders for their support of the new remuneration policy, but notes the number of votes opposing this resolution*," said Morrisons. "*We undertook extensive consultation before proposing the new remuneration policy and hope that shareholders note the positive changes we have made including the introduction of a post-cessation shareholding guideline. Although the policy vote passed, and we received considerable positive feedback during consultation, the board acknowledges a number of shareholders voted against the policy. Kevin Havelock (chair of the remuneration committee), on behalf of the board, will therefore continue to engage with shareholders and will report in due course on the outcome of those discussions.*" Two of Morrisons' non-executive directors quit earlier this year claiming that chairman Andy Higginson and the two executives were too close. Last year, Potts and Strain were paid £4.2m and £3.1m respectively, though 63-year-old Potts probably will retire next year and be replaced by Strain. A source told *The Times* it would be inappropriate to slash Potts's pay so close to retirement and Strain's pension payouts would be brought into line with the rest of the workforce over time. The generous payouts come at a time when supermarkets have saved millions from business rate holidays during the pandemic whilst simultaneously receiving a sales boost.

TRAVERS SMITH

Bare bones UK-EU trade deal still possible

A 'bare bones' trade deal between the UK and the EU, to operate after the Brexit transition period ends on December 31, still looked possible, commentators predicted, after the PM ruled out any extension to the negotiations. There will be no extension to the post Brexit transition period, which ends on December 31, PM Boris Johnson and the EC Commission both confirmed. Instead, a series of sector talks was due to take place during July in an attempt to set up a more detailed framework for possible *tunnel talks* in the autumn. Thus the diplomatic poker game, aimed at extracting concessions from one side or the other, or preferably both, seems destined to continue *down to the wire.*

A bare bones deal, to keep planes flying between the UK and the EU, to keep zero or minimum tariffs for trade in goods and to initiate a fishing licensing arrangement – may well be the most the negotiators on both sides can come up with in the short time that remains.

This may well leave the City of London and parts of the employee share schemes sector hanging out to dry, as there will be very little time in which to discuss post transition relations between the UK and the EU in the all-important financial services sphere. Share scheme sponsors and their advisers want to know whether – after December 31 - plans installed in subsidiaries on the European mainland will be subject to: *New bureaucratic controls on data flow from such schemes to the UK main company under GDPR rules *Whether UK based plan sponsor companies and/or their advisers will still be judged as being 'competent' enough (i.e. awarded equivalence) by Brussels to continue operating employee equity plans in their subsidiaries within EU states from next January and *Whether they will be caught by the Prospectus Regulation (*formerly the Prospectus Directive)* when they come to renew or extend such schemes. Depending upon whether relations between the UK and the EU will deteriorate further, this could mean UK based companies having to issue prospectuses in several languages for new employee equity awards in Continental subsidiaries.

PM Boris Johnson set the bar high by telling Brussels that UK financial services should enjoy a "predictable, transparent" environment from next January. He urged the EU *'not to play politics*

with equivalence decisions.' The UK's financial services *passporting* facility, which has enabled UK banks and companies to launch or trade cross -border financial instruments, including shares, within mainland Europe expires on December 31. Thereafter, Brussels will decide whether those UK based financial services meet the EU's 'equivalence' standards and that process can take many months to determine. In a statement to parliament, the PM called for a UK-EU trade agreement that "*should require both sides to provide a predictable, transparent and business-friendly environment for financial services firms, ensuring financial stability and providing certainty for both business and regulatory authorities and with obligations on market access and fair competition*." However, the talks have been largely about trade and not about financial services and secondly why, post transition, should the EU give the UK the same access to its financial markets as the latter enjoyed while still being a member state?

Flotations down in London, but soar in US

*There have been only four LSE listings so far this year, raising just $592m, compared to 12, raising $2.6bn over the same period last year. Warner Music, one of the few to get away this year, eschewed dashes to the world's financial hubs in favour of Zoom meetings. However, public listings via IPOs in the biotech and pharma sectors, are back in favour in the US, where more flotation announcements are expected shortly in the cloud computing, Big Data and artificial intelligence (AI) sectors.

Experts suggest that companies are ready to disregard the guidelines of the new Pre-Emption Group which sits under the administrative umbrella of the FRC. All was when the Association of British Insurers and the National Association of Pension Funds ruled the roost because companies feared institutional disapproval. This ended when ABI passed the function to the Investment Association.

IFRS 2 debits tax deductible

The Court of Appeal (*Lord Justice Patten, Lord Justice David Richards and Lord Justice Moylan*) agreed with the tax tribunals that certain accounting debits required under IFRS 2 on the grant of employee share options were deductible for Corporation Tax purposes. The court unanimously (and *inter alia*) found that: the debits required to be recognised under IFRS 2, were an "*expense*" for the purposes of Section 48

CTA 2009. This provision largely applies an accounts-based test, subject only to any express statutory provisions to the contrary. The ruling was a defeat for HMRC, which had taken the case all the way through the tax tribunals and the courts in order to consolidate its tax charging base.

The use of the word *incurred* in Section 54 CTA 2009 did not impose any additional requirement for the amounts to have actually been spent, said the senior judges. The amounts were incurred wholly and exclusively for the purposes of the taxpayers' trade (*i.e. as part of the remuneration package of their employees)* and not simply to comply with applicable accounting standards. Similarly, as the amounts related to the services of employees, they were revenue rather than capital in nature. Section 1290 CTA 2009 did not apply to deny or defer the allowance of the relevant debits. Revenue and Customs v NCL Investments Ltd & another [2020] EWCA Civ 663.

William Franklin partner at Centre member **Pett Franklin** said: "This clear decision cuts through a lot of foggy thinking and so is to be welcomed, but it is unlikely to have much impact directly on the setting up of new schemes. However by demonstrating the centrality of the accounting, it may send out ripples that will in time affect share schemes. For example it may add weight to the rising pressure for valuations for tax and accounting purposes to become more closely aligned, and led by the accounting. This would have profound consequences."

*However, there was a court victory for HMRC when the Upper Tribunal in *HMRC v Vermilion,* overturned a First-tier Tribunal decision, by finding that a share option granted to a director in exchange for one granted when he was a consultant had to be taxed as employment income, reported **Linklaters'** Knowledge Portal. This was so even though the original option was not taxed on that basis. The situation had arisen after the company got into difficulties and reorganised, promoting the adviser to executive chairman, requiring the cancellation of his original share options and the substitution of new ones.

COMPANIES

Aviva said that executive reward should be the first port of call for companies planning pandemic related cut-backs. However, companies in the worst hit sectors like airlines and package holidays should cut their payrolls where necessary. Mirza Baig, global head of governance at Aviva Investors, the fund management arm of the financial services provider, told *The Mail on Sunday*: *'Any pain should start at the top. Aviva Investors has been communicating that any pay cuts should affect senior management first, whether that means a cancellation or reduction of bonuses, lower future share awards, or even a temporary suspension of salaries. 'Those measures should come before any scrutiny or decisions about longer-term, wide-scale redundancies or restructuring.'* FTSE 100 ceos are on average paid more than 110 times their average employee, which Baig said looked *'increasingly indefensible'*. He added: *'Although the right number will vary by company and sector, the overall number has to fall. In future, we would not expect ceos to get bumper pay rises just because they may be proportionately in line with average workforce increases*.' Baig, whose company invests on behalf of giant pension funds, said it was too early for some senior executives to be back on full pay after initially taking salary cuts.

BP will axe 14 percent of its workforce, said ceo Bernard Looney in an internal note. The move will mostly affect staff in office-based jobs and those holding senior roles, with the top 400 positions expected to be cut by one-third. Senior management will not receive pay increases this year, while junior and mid-ranking staff will only get them from October. Cash bonuses for the year are "*very unlikely*," he said, without clarifying whether that extends to BP's trading division. Staff will be able to apply for voluntary redundancy starting June 15. Employees at filling stations won't be included in the reorganisation as they're considered front-line workers. Their wages rose in April and will climb again in August.

British Airways (BA) told thousands of employees to take pay cuts and accept new conditions or face losing their jobs. Those who have been placed on *consultation* have been told they must accept pay cuts of up to 60 percent if they want to continue working for the IAG-owned airline, claimed reports. In many cases, the airline wants staff to agree to include temporary lay-off clauses in their contracts, which would allow BA to suspend staff for up to six weeks a year *without pay*. It came as BA planned to slash as many as 12,000 jobs amid the pandemic after plunging to its worst ever quarterly loss. In March, almost all its employees were placed on furlough. IAG, the firm's parent company, said that the pandemic and tough quarantine rules around the world would cause long-term changes in the industry....

Burberry: Bonuses for Burberry's senior executives are being tied to how well the luxury group responds to the pandemic. The company's annual report revealed that the maximum bonuses for directors will be cut from 200 percent to 50 percent of their salaries next year and will be based on "*strategic objectives set around the company's response to and recovery from Covid-19*". Burberry was founded in 1856 by Thomas Burberry, who created the gabardine waterproof fabric used in its famous trench coats. It has a market value of £6.5bn. In May, the company axed its dividend after its profits fell by two thirds, following stock write-downs.

English wine and other drinks producer **Chapel Down Group**, announced dealings in its five pence ords: staff exercised and subsequently sold 147,000 share options under the company's employee share option scheme and fd Richard Woodhouse exercised and sold 119,666 options over its ords. The options were exercised at a price of 10 pence per share and were subsequently sold for 75 pence each. Following this sale, Mr Woodhouse's shareholding in Aquis listed Chapel Down is 929,951 ords, representing 0.64 percent of the company's enlarged issued share capital. Martin Glenn, chairman from July 1, acquired 266,666 shares at 75 pence per share. The company issued 713,332 options over its ords under the 2020 option scheme – 533,332 options were issued to Mr Glenn and 180,000 options were issued to key members of staff. The options have an exercise price of 76.5 pence per share and are exercisable from July 1, 2023 or before in the event of any of the following: *a takeover; *a sale of the whole of the business and assets of the company; *the admission of all or any of the share capital to any recognised investment exchange other than the AQSE Growth Market (a new listing). Following the grant of options, the company has 8.78m options over ords outstanding, representing 6.1 percent of the company's enlarged issued share capital. Betting shop owner **GVC** awarded its top executives shares worth more than £3m, despite furloughing 14,000 staff. The Ladbrokes Coral group, one of

GVC's subsidiaries, gave ceo Kenny Alexander shares currently worth £3.3m while coo Rob Wood was rewarded with shares worth £1.4m. GVC furloughed all staff at its 3,100 Ladbrokes and Coral betting shops in March but topped up the government funding so workers received a full wage. The company, which has benefited from business rates relief, said it had saved £20m a month since receiving government aid. Left-leaning think tank **High Pay Centre** condemned the shares award, calling on government to take action: "*For a company to be relying on public finances to pay its workers' wages, while handing out millions to its executives in bonuses flies in the face of what the general public expects from businesses at a time of national crisis.* However, GVC top executives have taken a 20 percent salary cut since May and won't be getting an annual bonus this year. Companies have been warned about dishing out long-term share bonuses during the Covid-19 crisis. Last April, the Investment Association, which represents investment managers and asset management firms, urged pay committees to postpone granting long-term incentives if the share price had yet to recover. It urged companies to cut the number of bonus shares. GVC told *This is Money*: "*We originally delayed the awarding of the LTIPs and the payment of the 2019 bonus due to the uncertainty created by Covid-19. However, the outlook for GVC is now more certain as a result of the gradual resumption of sport and the reopening of our retail estate. The remuneration committee has therefore deemed it appropriate to pay the 2019 bonus and make the LTIP awards, which contain stretching performance conditions that have not been adjusted to take into account the impact of Covid-19."*

Struggling **John Lewis Partnership** poached **Co -op Group** deputy chief executive Pippa Wicks to head up marketing, merchandising and trading. She replaces Paula Nickolds, who left JLP last January with a pay-off close to £1m.

Marks & Spencer senior executives will get no bonuses for the next two years, announced chairman Archie Norman. Under a new policy which will be put to shareholders in July, all directors will have to hold 200 percent equivalent of their base salaries in shares, up from 150 percent and they will have to keep their shares for at least two years even after leaving the company. Ceo Steve Rowe's reward package was £1.21m last year, including £143,279 paid out under the PSP scheme, about 20 percent down on the £1.5m he received in 2018 and his pay has been frozen, alongside that of his senior colleagues. "*Executive directors will still continue to be measured against a scorecard of individual objectives aligned to the strategic priorities set out earlier in this report, however no financial payment will be made in respect of their achievements,"* the company said in its remuneration report. "*The committee debated the appropriateness of this decision in a time when executives are working harder than ever and believes, in the context of wider macro-economic factors and the experience of the business with a large number of colleagues placed on furlough, this is the right decision for M&S."* No bonus was paid out under the annual scheme in 2019/20 due to performance issues, revealed the annual report. As a former Tory MP and shadow minister Archie Norman remains politically influential especially as non-executive chairman at BEIS. When finance director of Kingfisher, he worked with Centre chairman Malcolm Hurlston to overturn the Sunday trading laws, defeating the coalition of unions, churches and small businesses which opposed Margaret Thatcher's measure. This makes it less likely rather than more that Sunday trading relaxations will be introduced now to kickstart the economy – there is not enough time for a repeat of the campaign needed to ensure a parliamentary majority.

FEEDBACK

***Shares For Salary* campaign:** Jeremy Edwards, share schemes & incentives partner at Centre member Baker McKenzie examines programmes to preserve cash by paying employees (especially executives) a bigger proportion of their remuneration in shares: **"**So far, most companies have concentrated on using job retention schemes. However, as the ability and/or willingness of governments to keep job retention schemes come under pressure, companies will be forced to look at other routes to reduce cash commitments. A salary reduction plan may take one of the following forms: *an agreement to reduce salary, in return for the award of shares; *an agreement to use salary to acquire shares; or *an award of shares to employees who have already had a salary reduction.

"Share remuneration plans can be used as a replacement for cash bonus plans or to make share retention/loyalty awards. Companies should consider the following areas before implementing a programme:

1. Overall Strategy: The type of salary reduction

plan, the amount of the salary reduction, and who it will apply to (especially types of employees).

2. Award terms: Vesting conditions/types of awards and liquidity - when should employees be entitled to receive and then sell their shares.
3. Employment Law/HR: Employment law implications in implementing a salary reduction plan are key. Consider the effect on pension contributions (including employer contributions), on other benefits and national minimum wage issues.
4. Sourcing of shares: Cash savings can only be obtained if your company is able to use newly issued shares, treasury shares or shares already held in trust. A key question (especially for listed companies) is whether shareholder approval is required and, if so, whether shareholder approval is possible in practice.
5. Corporate law (general and securities laws): Everything to do with share delivery and the ability to launch under securities laws.
6. Tax-effective salary reduction is needed for tax purposes - Type of award (tax driven) - Tax withholding and reporting.
7. Employee communications and consent: Crucially, employee consent to the salary reduction for shares plan may be required for both employment and tax reasons. 8 Administration: Last, but not least, how will the plan be administered, especially if it involves many new employee award holders?"

WORLD NEWSPAD

***China:** Controversial **Huawei** is a private company owned by its employees, through an *all -employee share ownership scheme,* focused on its core competences and on its internal institutions. It has pioneered Chinese outward investment and grown rapidly to employ around 194,000 people and is an employment catalyst around the world. Huawei boasts annual revenue of almost £100bn from 170 countries. It is generally seen as the most desirable employer for ambitious Chinese students and confers not only social status but high salaries and perks too. It is not, at least overtly, state-owned, a tool of the Chinese Communist Party or of the People's Liberation Army, or a snake-in-the-grass of Chinese imperialism, wrote Jonathan Liebenau, an associate professor at LSE's department of management. Huawei does pay taxes and abides by corporate and other national laws of China as well as those of other countries where it has investments. However, critics claim that its huge shareholder register is only for show and that its shares can only be bought by Chinese citizens, who have to sell them back to the company when they leave its employment. They claim that real power in Huawei is exercised by a 'trade union committee' which is controlled by the Communist Party. Little is known about the 100 senior Hauwei employees who have links with the Chinese military or with internal intelligence agencies.

***France:** Bpifrance is launching a new investment fund for key technology companies. The idea is to support French start-ups so they don't get acquired by big foreign companies too quickly or they don't fall behind when it comes to international competition. Bpifrance will invest €150m as part of this fund. It could be extended in 2021 to reach €500m. *The bridge round programme from the French public bank has been doubled with another €76.67m. Start-ups that don't fit the bill and can't get a government-backed loan can now get a loan from Bpifrance directly. Bpifrance will lend €100m. *Capital-intensive tech start-ups working on tech breakthroughs will be able to raise money more easily from Bpifrance as the government has injected €153m in various vertical-specific funds (*Programme de soutien à l'innovation majeure*, AI challenge). Deep-tech start-ups and deep-tech accelerators will receive as much as €200m through a technology transfer fund and a second French Tech Accélération fund. The support plan involves complex investment funds, mostly managed by Bpifrance. France announced a €4bn plan to help start-ups last March, so the new announcements are more about refining and adding additional measures, in addition to the widely used short-time working scheme to avoid layoffs.

***Indian** conglomerate, **Tata Group**, which is seeking a £500m loan from HMG to save 8,000 UK jobs, is considering an executive pay cut for the first time. The group is mulling over the idea of 15-20 percent salary cut for senior management amid the impact Covid-19 and its subsequent lockdown. While the decision was taken at the Tata Sons' board meeting on June 5, the holding company will have to get this pay cut decision approved by the individual boards and respective committees. "The group companies, where the cost-cutting measures are needed and individual companies will have to get this passed through their remuneration committees and

boards. The appraisal cycles and bonuses for Tata Sons and group companies may be deferred too, but no job cuts have been envisaged at this point," said a source. "Tata Sons is in a strong financial position with adequate cash flows to support the group companies and new growth initiatives. Tata Sons is not looking to monetise its investments to raise capital," said N Chandrasekaran, the chairman of Tata Sons.

*Japan Airlines** will give its front-line employees up to 150,000 yen (£1,130) in extra pay as a token of gratitude for maintaining flights despite the pandemic. The company feels it needs to raise employee morale, given that some staff are putting themselves at risk of infection. However, the chairman and president will receive no bonuses this summer. Other high-level executives will see their bonuses slashed by 70 percent. Shareholder dividends will not be paid for the fiscal year ended March, with management now tasked to explain the lack of payouts and their performance, which has come under fire. Revenue has been plunging due to the pandemic, leading to a ten percent cut in executive pay and 50 percent lower summer bonuses for the broad mass of employees from last year.

*Netherlands:** Employee communications platform **Happeo** raised $12m in venture capital as the Amsterdam-based company prepared to accelerate development and marketing to companies with diffused workforces working remotely.. Inkef Capital led the round of funding, which included participation from previous investors, including DN Capital, Maki, and Vendep Capital. The funding came a week after competitor Workvivo raised $16m.

*New Zealand**: Following the recent mbo of Stuff, the news media company, **Sinead Boucher**, plans to develop an employee ownership model too. Boucher noted that Beca, a successful New Zealand engineering and management consultancy firm, operates with its staff as shareholders. Even more recently, Countdown announced it is awarding shares to over 14,000 of its permanent employees due to their efforts keeping stores open during the lockdown. Her deal to buy her current employer, its Stuff and Neighbourly sites and 49 newspapers is a gutsy, big-hearted and highly risky play which has won admiration from within her 900 staff and the news media industry. Research has shown that employee-owned businesses on average perform better than more traditionally-owned businesses. Such results are understandable: employees are more likely to be engaged in businesses in which they are part owners. Share schemes can be used to give employees shares or allow employees to purchase shares, sometimes enabled by a loan from the company. As with Countdown, the employee shareholders can be just one of the many different shareholders. Or the employees may own the majority of the company's shares as with Beca. Shares can be awarded to all those entitled in one tranche, as Countdown will do. Or, as occurs in Beca, they can be given to certain employees because of time served and/or the employee's perceived value to the company.

Employee shareholders' rights can be further whittled away as some employee shareholders have fewer rights than ordinary shareholders, for example, they may have no voting or dividend rights. Employee share ownership is only part of the equation even for employees whose shares have full voting rights. In reality, the employees may have no power and influence, no say, in how the company is operated. For example, the Countdown employees, even if their votes are combined, represent a small minority of Countdown's votes and the decision-making power of shareholders is limited.

***Richemont** said it may make changes in top management after a report that the Swiss luxury-goods maker's employees are frustrated about increases in senior executive compensation when most directors got pay cuts. Richemont is reviewing its human resource department, and it hasn't made any decisions so far, said the Geneva -based company. Earlier, *Businessmontres*, a website that covers the watch industry, said Sophie Guieysse, the head of HR, was leaving the company. Richemont's business is reeling due to the Covid-19 pandemic. Swiss watch exports plunged to their lowest level in at least two decades in April as disease outbreak led to factory closures, shuttered shops and travel bans. Chairman Johann Rupert warned of "grave economic consequences" that could last three years. Richemont said it may make changes to its senior executive committee, which includes seven managers including Guieysse. The company's top management has suffered a 20 percent reduction in base salary until further notice.

US: A California utility pleaded guilty to the deaths of 84 people in a wildfire, the deadliest US corporate crime ever successfully prosecuted. Pacific Gas & Electric (PG&E) admitted that the 2018 "Camp Fire", the state's deadliest and most destructive ever, was caused by its faulty equipment. In the court hearing, a judge read the name of each victim aloud to the company ceo. It

will be fined millions of dollars, but no-one will go to jail. Many of the wildfire's victims were elderly or disabled. Some were found in burnt-out cars, killed as they attempted to flee the blaze with their family and neighbours. Others were discovered in and around their homes, as elderly residents decided against leaving early, not understanding the gravity of the threat. In Butte County Superior Court, an image of each victim was displayed on a screen as PG&E's ceo Bill Johnson pleaded to every single count of involuntary manslaughter, responding 84 times: "Guilty, your honour." In a highly unusual US corporate acknowledgment of criminal wrongdoing, Mr Johnson apologised to the families, saying: "*I've heard the pain and anguish. No words from me can ever reduce the magnitude of that devastation*."

Uproar over US bankruptcy bonuses: In the early 2000s, large struggling US firms developed a practice of paying retention bonuses to senior managers immediately after filing for Chapter 11 bankruptcy. Congress banned this practice in 2005 with the late Sen. Ted Kennedy, citing the need to protect public confidence in the bankruptcy courts and fight "glaring abuses of the bankruptcy system by the executives of giant companies. "*But by regulating only bonuses paid during the bankruptcy case, Congress left open the possibility of paying retention bonuses immediately before a bankruptcy filing. This is exactly what companies are doing*," wrote Jared Ellias, Professor of Law at the University of California. On the eve of an historic bankruptcy, JCPenney paid $7.5m in retention bonuses to its senior managers shortly after furloughing more than 80,000 employees, Mr Ellias wrote in *The Hill*: "*As we confront the early stages of a Covid-19 deluge of bankruptcy cases amidst record unemployment, Congress should ban this straightforward evasion of congressional restrictions on executive pay.* When JCPenney paid these bonuses, it followed the same path as many other firms recently, especially in the just as troubled energy industry. For example, Whiting Petroleum paid $14.6m in bonuses in the days before bankruptcy, including $6.4m for its ceo. "Executive pay is a challenging subject for federal regulation. On the one hand, troubled firms need talented managers to turn their businesses around and navigate a bankruptcy process. Any interference with the ability of troubled firms to hire and pay executives could diminish their ability to offer competitive pay packages to attract and motivate the best people for the job. On the other hand, such practices can be cynical attempts to evade the regulation and pay retention bonuses despite Congress's law banning them. Its 2005 attempt to regulate bankruptcy pay was unsuccessful in other ways as well. It left open the possibility of paying "incentive" bonuses which managers earned by accomplishing challenging 'stretch' goals, without specifying what that means. While many companies have responded to the new rule by paying bonuses on the eve of bankruptcy, others have chosen to engage in the new process of proving that an executive bonus is a bona fide incentive bonus and not a disguised retention bonus. Congress's demand that bankruptcy judges distinguish permissible "incentive" bonuses from banned retention bonuses is an unproductive exercise. The new procedure invites a great deal of litigation that makes the process of approving a bonus plan 60 percent more expensive than it was pre-2005; to make things worse, the litigation rarely provides a judge with much in the way of useful information in determining whether the proposed bonuses are, in fact, bona fide incentive bonuses. *"Accordingly, Congress should revisit the entire regulatory framework from 2005 and start over. A better approach would move away from distinguishing "incentive" and "retention" bonuses and force Chapter 11 firms to justify all executive compensation with data on historic practice and prevailing market conditions*. Unless companies can show some special justification, unusual bonuses paid prior to bankruptcy should be forced to be returned to the firm for the benefit of unsecured creditors, he said.

*Potential investors in Hertz Global Holdings' share offer can't say they haven't been warned, as the word "*worthless*" appeared five times in Hertz's filing to sell up to $500m worth of shares. The SEC filing, studded with other dire warnings, was notable for what it didn't have: - any details about a reorganisation plan. Investors blinked when Hertz asked a bankruptcy court to issue stock and perhaps even more surprised when the court agreed to let the deal go forward. The company entered bankruptcy protection, drowning in almost $20bn of debt and hit hard by the global restrictions on travel, designed to slow the spread of Covid-19 and deprived of most of its *loaner car* revenue due to less driving and fewer accidents. It mentioned the delisting notice received from the New York Stock Exchange, a few days after Hertz's May 22 bankruptcy filing. Hertz appealed against the determination and said its newly issued stock would continue to be listed and trade on the NYSE pending resolution of such

appeal. "We cannot provide any assurance as to the ultimate resolution of the appeal," it said in the filing. Hertz went on to say that it had not yet negotiated a re-organisation plan with its creditors. Back in May, it restored executive pay to pre virus -related levels, except for ceo Kathryn Marinello, who agreed to a ten percent salary reduction and previously had forgone her base salary. Its bankruptcy process could end in asset liquidation for distribution to creditors. Hertz paid $16.2m to 340 executives in May as part of a plan to keep them in place *(retention bonus*) while the company attempted to reorganise. Paul Stone, who was promoted to ceo three days before the retention bonuses were awarded, got $700,000 under the plan. Cfo Jamere Jackson got $600,000, while chief marketing officer Jodi Allen got about $190,000. Time and again, these huge 'retention' bonuses paid out days before US bankruptcy proceedings, are justified by company shroud waving – about how these immensely valuable executives would jump ship if not incentivised. However, now financial commentators and politicians are asking: *Where exactly would these executives go to, if they weren't awarded their retention bonuses?*

***HCA Healthcare** is one of the world's wealthiest hospital chains, present in 21 American states and the United Kingdom. In the UK it is biggest provider of for-profit medicine with 20 facilities based in London and Manchester

It made more than $7bn in profits over the past two years and is worth $36bn. It paid its ceo $26m in 2019, reported *The New York Times.* But as Covid-19 swept the country, employees at HCA repeatedly complained that the company was not providing adequate protective gear to nurses, medical technicians and cleaning staff. HCA executives warned that they would lay off thousands of nurses if they didn't agree to wage freezes and other concessions. Weeks earlier, HCA received $1bn in bailout funds from the federal government, in an effort to stabilise hospitals during the pandemic. HCA is among a long list of deep-pocketed health care companies that have received billions of dollars in taxpayer funds but who are laying off or cutting the pay of tens of thousands of doctors, nurses and lower-paid workers. Many have continued to pay their top executives millions, although some have taken modest pay cuts. The *New York Times* analysed tax and securities filings by 60 of the country's largest hospital chains, which have received collectively more than $15bn in emergency funds through the economic stimulus package in the federal CARES Act. The hospitals — including publicly traded juggernauts like HCA and Tenet Healthcare, elite non-profits like the Mayo Clinic, and regional chains with thousands of beds and billions in cash — are sitting on tens of billions of dollars of cash reserves that are supposed to help them weather an unanticipated storm. They awarded their five highest-paid officials $874m in the most recent year for which they have disclosed their finances. At least 36 of those hospital chains have laid off, furloughed or reduced the pay of employees as they try to save money during the pandemic. Industry officials argue that furloughs and pay reductions allow hospitals to keep providing essential services at a time when the pandemic has gutted their revenues. But more than a dozen employees at the wealthy hospitals said that their employers had put the heaviest financial burdens on front-line staff, including low-paid cafeteria workers, janitors and nursing assistants. They said pay cuts and furloughs made it even harder for members of the medical staff to do their jobs, forcing them to treat more patients in less time. Even before the pandemic swept the US, forcing hospitals to stop providing lucrative non-essential surgery and other services, many smaller hospitals were on the financial brink. In March, lawmakers sought to address that with a vast federal economic stimulus package that included $175bn for the Department of Health and Human Services to hand out in grants to hospitals.

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