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it's our business

newspad of the Employee Share Ownership Centre

Centre urges chancellor to overhaul outdated EMI rules

Esop Centre founder and chairman, **Malcolm Hurlston CBE**, has asked chancellor Sajid Javid to overhaul the qualifying rules of the ageing **Enterprise Management Incentive (EMI)** share options based scheme for SME companies.

Mr Hurlston wrote to the chancellor after some of the UK's leading start-ups, including **CityMapper, Revolut** and **Onfido,** said they wanted to insulate the nation's technology sector from the potential shock of Brexit by easing the EMI qualifying rules. Otherwise, they fear that key staff will be poached by Silicon Valley high tech gazelles and giants too.

They sounded the alarm after more than 50 start-ups who originally incentivised their staff with EMI options, outgrew the qualifying size restrictions and thus have had to turn to less attractive tax-approved incentive schemes. Businesses no longer qualify for EMI status once they exceed £30m in gross asset value or they have more than 250 employees. The 11,700 UK companies currently using EMI offer their employees tax and NICs relief when they cash in after their options vest. EMI helps businesses reduce costs by allowing them to award employees competitive tax-approved share options, rather than costly salary increases, which often start-ups can't afford. The start-ups want HMRC to reform the existing regime by extending it to bigger companies.

Mr Hurlston told the chancellor: "*It is now almost 20 years since your predecessor at no 11, Gordon Brown, introduced the EMI at the prompting of leading Centre members. However, the £30m gross assets limit for firms to qualify has not been lifted since January 2002, even though there has been roughly* ***63 percent*** *price inflation (from year 2002 to end 2018). So there is a very strong case for raising the qualifying size limit by value considerably. Inflation is not the only reason. The other is the international talent war, with options worth millions routinely offered across the Pond. The case for incentivising only 'top talent' is not so clear. Leading private equity firms such as KKR argue that in many circumstances a small improvement from many employees makes all the difference and award* ***all*** *employees incentives equivalent to about 40 percent of annual salary.*

"Typically, however, the numbers incentivised by EMI in any one company are between five and seven. Owners of larger SMEs seeking to qualify EMI qualification shouldn't be automatically excluded just because they employ more than 250 people. They would say - ' If we were admitted to EMI, we would only award the EMI options to perhaps 20 people.' Any overhaul of the EMI rules - now much needed - should be accompanied by a requirement to extend an interest to ***all employees*** *too,''* added Mr Hurlston.

From the chairman

Jesse Norman may be the first Treasury minister with oversight of HMRC to enjoy a history in employee financial participation. He is showing a sure touch on the loan charge issue. Yes, there was wrongdoing. Yes, there should be compassion for people hard hit. There is an implied rap on the knuckles for the professional firms who didn't warn enough at an awkward time for them. In this rump Parliament there may be further hard decisions to take, uncomfortable for our sector where the devil has sometimes been allowed the best tunes. His reference to NAO was well judged. Nobody is better respected.

Amid these large concerns I hope Jesse Norman will spare a thought for the Roadchef beneficiaries. There would be allparty support for cutting the gordian knot, rescuing HMRC and the other current players who have got themselves into such a heartless mess that the former 'devil' Tim Ingram Hill now smells the sweetest.

Malcolm Hurlston CBE

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EMI is proving itself to be a rewarding exercise: the ***average*** taxable gain among those participants who cashed in their EMI options in the fiscal year 2017-18 was **£73,810,** according to HMRC official statistics. Provided they have followed the scheme rules, i.e. that the exercise price was equal to or above the HMRC approved actual market value (AMV) of the options at the time of their initial award, they usually have to pay only ten percent Capital Gains Tax (CGT) above the annual exemption limit. *However, newspad pointed out that these key employees were the lucky ones whose employer did* ***not*** *go bust, as is sometimes the case in the start-up sector. Nor were they among those left frozen in time – in '****Exit Only'*** *EMIs - where the anticipated IPO listing, or other change of control, never comes to fruition. In such cases, their EMI options can be worthless.*

Part of the problem is that some of the qualifying limits have not been increased since EMI was launched by then Labour chancellor **Gordon Brown** in the year 2000. The gross assets value limit ***was*** raised from £15m to £30m in January 2002, but since then, retail prices have risen by roughly 63 percent, which means that, in order to have kept pace with inflation, the gross asset value limit should be at least **£50m**. The start-ups say that far too many of them no longer qualify for EMI status because they've grown too big, so the current limits should be increased to £100m and a new maximum of 500 employees, as these start-ups enter a new phase of growth.

EMI was intended to be an equity incentive scheme targeted at ***key*** employees (*not necessarily directors)* in start-up high tech SMEs. Over time it has evolved into a potential all-employee share option based scheme, but in many qualifying companies, only between five and seven key employees are awarded the tax-protected EMI options. Nevertheless, the SME signatories would argue that were companies with (say) 400 employees allowed to participate in the EMI, then they would control very strictly the numbers of employees granted the options. To meet the government's concern over the loss of more tax revenue, or the risk of tax abuse, the Treasury/HMRC could set an *overall lifetime cap* for each taxpayer on the quantum of EMI gains that could be taxed at the lower CGT rate for capital gains, wrote Centre member William Franklin of employee shareholder lawyers **Pett Franklin**.

The total Income Tax and NICs contributions lost by HMRC on EMI vested options in the fiscal year 2017-18 was **£280m**.

The leading fintechs said: *"Innovate Finance, together with members of the UK's tech and fintech community, are calling for an urgent review of the UK EMI employee share ownership scheme policy. We collectively believe that raising the asset cap limit to £100m and employees to 500, is more crucial now than ever. Over the past decade, the UK has benefited from a wave of technological innovation which has been the envy of the world. This is in part due to thoughtful policy-making and flagship incentive schemes such as SEIS, EIS, Entrepreneurs Relief and EMI, which have had a material impact on attracting the very best talent and companies to our shores. The EMI scheme has been a great success to date – 11,700 UK companies operated the scheme in 2017-18, making it the most popular share scheme by some distance. With the current restrictions on EMI, which are not reflective of the UK tech sector's maturity levels, the scheme limits are proving to be outdated and restrictive, unintentionally penalising employees of fast-growing tech companies.*

"The maturing UK ecosystem now has in excess of 50 tech start-ups which have surpassed the company size criteria for EMI. As a result, these companies are being forced to adopt less employee-friendly approaches, damaging their ability to attract, reward and retain the best talent. For these larger start-ups and private companies, the scheme is now inaccessible.

"During a period of Brexit uncertainty, we are certain of one thing – that the UK must act now to strengthen its thriving tech and financial services ecosystem. We are calling for an increase in the current limits of EMI from £30m asset cap to £100m, and from 250 to 500 employees. The increased limits will not only support tech companies in attracting the best talent, through balancing the risks of working at a start-up, rather than an established business, but will support the flow of jobs and capital for HM Treasury itself. It will allow for greater employee ownership, which in turn means greater representation of worker interests and in some instances, voter rights. This is the right time to reconsider the EMI thresholds given how the scale and landscape of technology have changed significantly since the introduction of the scheme in 2000, and should be addressed with the necessary urgency required." Nikolay Storonsky, founding ceo of consumer finance firm Revolut; Omid Ashtari, CityMapper president and Doug Monro, ceo of job site Adzuna, are among founders who signed the letter. Other signatories include **Nested** and **GoCardless** co-founder Matt

Robinson, and Husayn Kassai, ceo of ID checking firm Onfido. "What we have right now is competition from Facebook, Google and all these tech giants," said Mr Kassai. "Many people have to take a pay cut to join a start-up. An executive might join at £50,000, when at traditional companies they would get three times that. The way to balance this is with share options."

Roadchef

Newspad asked the **Roadchef EBT1** trustee, Reed Smith**,** when the compensation pot will be paid out to the Esop participant ex-employees, who have been waiting for justice five and a half years after the High Court ruling in their favour. Despite a Commons protest by 16 MPs, two years ago, against the non-payment of the compensation, the beneficiaries have yet to receive even a penny of the compensation they are owed.

Their next substantive update could be delayed until November, some Esop beneficiaries have been told. One told *newspad: "We've heard nothing more, except that there's a rumour that we will be given a detailed briefing note in November, whatever that means. Who would have thought that nearly another year has gone by with not a penny of our compensation?"*

In a House of Commons *early day motion*, MPs noted with concern that "*ex Roadchef ceo Patrick Gee's successor, Timothy Ingram Hill, paid c. £10m to HMRC as tax on Roadchef share sale proceeds of over £26m, which he obtained in breach of trust; believes that these funds, and its interest belonged to the Trust, as the High Court ruled in 2014; agrees that this is a serious issue for the beneficiaries, many of whom were low-paid catering and cleaning staff, some of whom have sadly since passed away; and calls on the government to review HMRC's position on this issue to ensure that, to the extent HMRC has the discretion to do so, that the Trust's money is repaid, so that 4,000 Roadchef beneficiaries can receive their just entitlements, of which the High Court has already found they were wrongly deprived."*

Christopher Winston Smith, director of Roadchef EBT1, won an earlier battle with HMRC over the restitution – to the compensation pot – of the estimated £10m which Mr Ingram Hill paid as tax on the Roadchef shares sale. As the High Court had nullified the transfer of Roadchef's Esop shares from the original EBT into a second performance shares trust set up by him, the 'tax' paid by Ingram Hill was no such thing. However, the beneficiaries' fears have returned, as Winston Smith has pledged to stop HMRC from taxing the compensation pots, thus triggering a second battle with the tax authorities.

The extraordinary division of the pot, agreed after extensive post court hearing negotiations, still rankles with many. The surviving 250/300 original Esop participants are to get 61 percent of the pot; the pre Roadchef sale employees who did not participate in the Esop are to get nine percent and employees who were employed **subsequently** by Roadchef are to get the remaining 30 percent, even though they had nothing whatsoever to do with the plundered Esop. This compensation carve up was secured only after Ingram Hill, to his credit, insisted that the original Esop participants should have the lion's share of the pot. He had threatened to withdraw his estimated £20m compensation payment offer unless his wishes were carried out.

Brexit

*Some risks of post Brexit market disruption remain, particularly in the derivatives markets, the **Financial Conduct Authority** said in a speech - *Preparing for Brexit in financial services: the state of play* - delivered at **Bloomberg.** In it, the FCA identified key regulatory issues that remain unresolved in a *no-deal* scenario, reported *Herbert Smith Freehills.* The FCA emphasised that although substantial progress had been made, some risks of disruption remained in the event of a *no-deal* Brexit, namely in the areas of: ****Data exchange (cross-border transfer of personal data***); *Share Trading Obligation (STO); *Derivatives Trading Obligation (DTO); *Clearing – in particular the impact of the expiry of the temporary equivalence decision for UK CCPs in March 2020; *Uncleared derivatives; *Progress on contract repapering and *Retail financial services preparation (highlighting the need for firms to take account of local regimes and review arrangements for servicing EU retail customers).

As revealed in the September issue of *newspad*, the unimpeded cross-border transfer of personal data is critical to administrators of UK based share schemes with subsidiaries within the EU, but the transfer of such data from within the EU to the UK, post a *no-deal* Brexit, ***could become illegal***. For example, in the event of a hard Brexit, any transfer of personal data by **Irish** domiciled funds and fund service providers must be carried out in accordance with one of the safeguards available under Chapter V of the GDPR. Unless they can rely on one of the other safeguards set down in the GDPR, if an Irish business does transfer personal data to one or more UK based companies, it should put in place EU Commission approved ***Standard Contractual Clauses*** with those UK companies. A *no-deal* Brexit means that the UK would no longer qualify for financial passports, or equivalence ratings and could be judged 'inadequate' in terms of data privacy protection by Brussels.

Employee share awards cut company tax bills

Multinationals are reducing their UK tax bills by increasing their employee share awards. **Twitter**'s profits in the UK surged last year as more advertisers flocked to the platform, but the company's tax bill fell due to an increase in employee share awards. Profits at Twitter UK, the US social media company's British subsidiary, leapt by 800 percent to £3.6m in 2018. *Despite the rise in profits and revenues, Twitter's UK tax bill fell from £2.4m in 2017 to just **£41,000** last year.* The decline was down to the use of deferred tax credits built up in prior years, timing adjustments *and a rise in share-based payments to staff.* Share-based compensation at Twitter UK rose from £7.9m to £8.4m. Employee share awards can give companies tax breaks if their share price rises above the discounted or market price set in the scheme. Then the business is entitled to tax relief because the company is notionally losing money by handing out the shares at the lower price. **Amazon**'s UK tax bill was adjusted down by £17.5m last year due to share awards and **Facebook**'s tax liability was reduced by £6m in 2017 for the same reason. However, the relatively-small tax bills of tech giants in the UK is a source of controversy. Earlier, **Amazon** was accused of paying "diddly squat" tax in the UK last year. Twitter has two share award schemes, set up in 2007 and 2013. Both grant stock after four years to eligible employees. Twitter's share price rallied over 50 percent during 2018, helping to explain the discount. Accounts show share based payments reduced Twitter's UK tax bill by £881,000 last year, which would have wiped out the company's entire Corporation Tax bill if not for other adjustments. Twitter UK's accounts show headcount rose from 174 to 192 people last year and staffing costs rose from £20.2m to £23m.

MOVERS AND SHAKERS

***newspad* share plan awards**

Recognition of the best HR director in the planning and operation of employee equity plans is reflected in the ***2019 newspad share plan awards*** this year.

A separate category has been created to attract entries from HR directors who have demonstrated recently their commitment to the maintenance and spread of employee share ownership within their companies. HR directors and their staff are often the unsung heroes of successful all-employee share plans.

Entries are invited for the awards, which recognise the achievements of companies which offer employee share plans and hold up best practice models for other companies to follow. Companies can nominate themselves, or advisers can make submissions on behalf of clients. The deadline for all nominations is **1700 hrs on Friday November 29**.

The award categories this year are:

- **Best all-employee international share plan** (more than 2,500 employees)
- **Best all-employee share plan** (fewer than 2,500 employees)
- **Best share plan communications**
- **Best share plan presentation:** e.g. new features or new plan
- **Best use of technology in employee share plans**
- **Best creative solutions** (taking account of employee feedback, equality work, cultural and jurisdictional issues)
- **Most improved step change participation** (best push on comms and/or more generous offer terms)
- **Best executive/managerial equity reward plan** (involving more than 100 senior employees)
- **Best employee share plan practitioner** (with examples of client work)
- **Best start-up equity incentive plan**
- **Best HR director** (for provision of employee equity)
- **Company with highest percentage of employee agm shareholder votes**

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

Rules and conditions of entry are available at www.esopcentre.com/about/awards.

If you have any queries, please contact us at esop@esopcentre.com or call **+44 (0)20 7239 4971.** The winners will be decided by two impartial judges, experts in the use of employee equities, plus Malcolm Hurlston, founder of the Esop Centre. The finalists will be announced in *newspad* early in the New Year.

On the move

*Former cabinet minister and Centre friend **Sir Michael Fallon MP** is to leave the House of Commons at the next general election. Sir Michael, ex defence secretary, is an enthusiastic supporter of employee share ownership and helped steer the Royal Mail free Share Incentive Plan shares scheme for 150,000 postal employees through parliament. Centre chairman, Malcolm Hurlston told him: "I was sorry to see you have decided to pause your parliamentary career although these days everything is understandable." Mr Hurlston is anxious to see that Sir Michael's proposal of a Corporation Tax reduction for companies adopting all-employee schemes will not be lost after his departure from the House. "It is such a valuable initiative, much appreciated by members," the chairman added.

*****The web pages of Treasury ministers have been updated to reflect minor changes in their responsibilities, following the reshuffle after Boris Johnson became PM, reported Centre member **Deloitte**: *Chief Secretary - **Rishi Sunak**; *Financial Secretary to the Treasury - **Jesse Norman**; *Economic Secretary to the Treasury - **John Glen**; *Exchequer Secretary to the Treasury - **Simon Clarke**. see: https://www.gov.uk/government/organisations/hm-treasury

EVENTS

Guernsey 2019 – November 8

The next **Esop Institute**/**Society of Trust & Estate Practitioners (STEP)** Guernsey share schemes for trustees seminar will take place on **Friday November 8 2019,** at the Old Government House Hotel, St Peter Port. It is more important than ever for employee share scheme specialists and trustees to stay informed, especially given recent developments, such as the Crown Dependencies' joint initiative and the growth in the establishment of employee ownership trusts (EOTs), not to mention Brexit. These seminars, held jointly with the **Society of Trust & Estate Practitioners (STEP),** offer expert views, the enjoyment of continuing education along with the opportunity to discuss and network. UK based speakers - from **CMS, David Craddock Consultancy Services, Haines Watts** and **Pett Franklin** - will address key issues currently facing trustees and employee share scheme professionals. Hot topics will include:

- Can HMRC ask for that? Under CRS, Schedule 36 FA 2008 specific information and documentation from advisers is being sought. How did we get to this position? What is reasonably required? And Does HMRC have jurisdictional rights over the Jersey/Guernsey? with actual examples showing how poorly drafted some Notices are leaving recipients having to guess what is being asked for!
- EBTs as internal market makers for unquoted companies; managing trapped assets within EBTs
- Corporate governance changes around post employment share holding recommendations for listed companies
- UN Sustainable Development Goals 2030 and the role of employee share schemes
- Entrepreneurs' relief - update on recent developments

The extended half-day seminar will conclude with a networking lunch. Last year's event was an outstanding success, which we look to emulate, building on the achievements of this industry-leading networking and learning opportunity. Prices: **Esop Centre/STEP** members: **£375;** non-members: **£480.** Reserve your place now by emailing events@hurlstons.com or by calling us on 020 7239 4971.

Share plans symposium March 26: few slots left

Only three speaker slots remain to be allocated for the Esop Centre's fourth British Isles share plans symposium, hosted by senior legal member **Linklaters** at its **London** headquarters on **Thursday March 26** next year. Practitioner members and share plan issuer companies are advised to apply **now** for speaker roles before they are all reserved. Plan issuer company representatives who choose to deliver an all-employee or executive equity incentive plan case study (*with or without an adviser*) will be admitted free of charge.

The symposium will be introduced and chaired by Centre founder, **Malcolm Hurlston**. He will ask his audience: *How could all-employee share plan schemes be re-set to make them more popular with companies and employees?*

Jennifer Rudman of **Equiniti** will address a key question: *How do you ensure that all employee plans (Sharesave and SIP) continue to be relevant and provide benefits for today's workforce?*

Colin Kendon, partner (employee incentives) at **Bird & Bird,** will deliver a frank assessment of the popular Executive Management Incentive (EMI) share options based approved scheme used most often for selected employees.

David Craddock, who heads his eponymously named worldwide share schemes consultancy, will explain how SME companies are valued, so that employee shares can be issued. David is technical secretary to the ground-breaking *Worked Examples Group* which the Centre administers.

Jane Jevon of **Pett Franklin** takes the dust covers off the *Company Share Option Plan (CSOP), the forgotten share scheme; unlocking its potential and avoiding its hidden pitfalls.*

Garry Karch, the leading Esop banker in the UK, will explain *How Employee Ownership Trusts (EOTs) are structured and financed.*

Martin MacLeod of **Deloitte** will ask whether recent changes in the UK corporate governance code go far enough on the executive reward front.

Robin Hartley, a senior consultant at **RM2,** will discuss how best to structure and install *growth shares.*

Harry Meek from **Linklaters** will speak on a key subject, to be revealed nearer the time. The practitioner member speaker rate is **£275** and member delegates will pay **£395.** Non-member practitioners will pay **£595** (all ticket prices are VAT-able). The programme to date can be reviewed and downloaded from the Centre website www.esopcentre.com.

UK CORNER

Labour's £300bn confiscation plan could be stopped

Labour's ***Inclusive Ownership Fund*** plan, to force larger companies to transfer shares to employees annually if the party takes power after a general election, could be challenged in court, said *Clive Zietman* of lawyers *Stewarts*. Shadow chancellor, John McDonnell, has warned that, under a Labour government, a law would be passed requiring all companies with more than 250 employees to give away **ten percent** of their share capital over a decade to their employees (one percent of their equity per year). "Ignoring the economic, political and moral implications of such a law, what are some of the legal implications? The prospects of an imminent general election have focused minds on this topic. In the absence of any detail, one can foresee very quickly some of the striking challenges that would face those drafting such legislation. Any company wishing to avoid having its shares expropriated will exploit any legal avenue it could in order to protect itself. Where would the battleground be?" asked Mr Zietman.

"More interesting would be the practical implications for such a law and the need for *draconian anti-avoidance legislation* to make the process work. If this proposed law were introduced before the UK left the EU or before the expiry of any transition period, one could certainly imagine a company bringing a ***Human Rights*** challenge to the legislation. Article 1 of Protocol No.1 to the European Convention on Human Rights is currently enshrined in English law and protects (amongst other things) any company's 'peaceful possession' of its shares. *Forced expropriation of shares without compensation could well be seen as falling foul of this provision*.

"Mr McDonnell would presumably see foreign companies operating in the UK as fair game and would not want them to escape his net. If the foreign company were incorporated in, say New York, it is hard to imagine how the UK could extend its extraterritorial reach that far, although what about **Jersey** or the **Isle of Man**? Even if foreign companies were exempted, what if the company in question were the wholly-owned subsidiary of a foreign corporation?

"Fearful of having the shares in its subsidiary confiscated, the parent company might well decide to ***restructure***, so as *to subsume the subsidiary into the parent and simply make it a department.* It is hard to see how this sort of action could be stopped if the controlling mind and body of the corporate were abroad. Any foreign company exemption would be exploited to the maximum, with companies able to do so, transferring their qualifying credentials to offshore jurisdictions so as to avoid the share grab.

"How would one fetter the rights of any company to organise its affairs in any way it wishes, so as to avoid the impact of the legislation? What if a company with 400 employees were to split into two distinct companies each with 200 employees? How would that be treated? There might be other reasons for such arrangements that would have nothing to do with the new legislation but presumably this sort of restructuring would have to be stopped, as permitting it would make it too easy to sidestep the new law," he said.

"What about companies on the cusp of the magic 250 employee mark? A company with 249 employees would presumably ***stop hiring***. Indeed, directors of such a company could be failing in their duties if they were to allow the company's headcount to go over the line, given the obvious implications for the existing shareholders. There would be cases of companies with more than 250 employees who decide to ***reduce their headcount*** before or after the legislation became law. Carefully drafted language would be required to restrict any wriggle room. There would need to be a governmental body policing every company in the country so as to monitor how many employees each one has at any given time and then, presumably, prosecuting those who fail to comply. Self-regulation and self-reporting would be considered inappropriate. Then there would be the question of *which* employees would count. Would an employee who has worked for the company for 20 years have the same rights as one who was a part-timer taken on a day after the legislation came into effect? What about employees who left the company? It is hard to see why an ex-employee should benefit from having free shares on his or her departure but perhaps wide-spread share ownership is precisely what Mr McDonnell wishes to see.

"Another issue would be the type of entity caught by the legislation. It would be perverse to force companies to hand over equity but not, for example, ***limited liability partnerships,*** which would otherwise become safe havens for growing enterprises. In the absence of shares, how would a compulsory handover be imposed? Given the vagueness of this proposal, the only certainty is that there will be swathes of uncertainty. *However well any legislation was to be drafted, there would be huge grey areas and massive scope for conflict. Commercial litigators will be sharpening their axes at the prospect,''* added Mr Zietman.

Labour threatens bankers' bonuses

Bankers' bonuses could be banned in the UK in order to tackle high levels of inequality, shadow chancellor John McDonnell said. He warned the City of London that a culture of excessive bonus payouts remained a decade on from the financial crisis and said Labour would introduce rules to curtail such awards – including a potential ban – if banks did not take voluntary action first. "*If it continues and the City hasn't learnt its lesson, we will take action, I'll give them that warning now*," he told the *Financial Times*. "*If we have to take action, we will. People are offended by bonuses."* Saying that a crackdown on big bonuses would be among his first acts as chancellor, McDonnell said he would weigh up a range of options to limit them. A senior Labour source confirmed that an outright ban would be considered. According to statistics released by the **European Banking Authority** this year, more than 3,500 bankers in the UK were paid more than €1m (£900,000) in 2017, with total income of almost €10bn between them. Their average reward was €2m.

The finance and insurance industry pays out the highest level of bonuses of any sector in the British economy, increasing the total value of payouts by almost ten percent to **£15bn** over the year to March 2017, according to the **Office for National Statistics,** though still below the 2008 peak of £18.4bn. McDonnell said: "People are offended by bonuses and that unless banks stop paying them voluntarily Labour will take action and ban them altogether. Nurses, teachers, shop-workers, builders, just about everyone is finding it harder to get by, while Morgan Stanley's ceo paid himself £21.5m last year and UK banks paid out £15bn in bonuses." The Labour Party, when in power, intends to publish the names of everyone earning over £150k in the UK and to disclose how much income tax is paid by anyone earning over £1m. *Labour wants to ban share options, golden handshakes and golden goodbyes.* McDonnell promised a consultation looking at options ranging from increasing shareholder power to restrictions on the size of bonuses. Party policy appears to have shifted towards imposing a maximum pay ratio of 20:1 between ceos and staff, but only for supplier firms to the government. The *FT* said McDonnell's thinking was drawn from a report he commissioned last year from Prem Sikka, a professor at the University of Sheffield and emeritus professor at the University of Essex, whose research focuses on the ‘dark side of capitalism.’ Banks in the UK are already constrained (for the moment) by EU rules restricting bonuses to 200 percent of salaries. If bonuses are banned, salaries in London will rise - as happened preemptively at Deutsche Bank in successive years after 2016. Some mid-ranking traders at Deutsche Bank are already understood to be earning salaries of £600k, with no bonuses at all. Traders on these packages at the German bank are said to like it (*headhunters claim they don’t work as hard*.) Under compensation rules introduced by the **Bank of England** in 2015, senior managers must have part of their bonuses deferred for seven years, risk managers must have their bonuses deferred for five years, and material risk takers must have their bonuses deferred for three years. These deferrals apply to 40 to 60 percent of bonuses awarded, and bonuses can be clawed back for seven years or more for senior staff, wrote Sarah Butcher of *efinancial careers.*

Another consultancy EOT

Doyle Clayton, a leading workplace law and advisory firm has changed its ownership structure by creating an **employee ownership trust (EOT)**. No management changes have taken place or are anticipated. The firm, which started out as an employment law boutique, has leant towards employee participation, with non-lawyer employees gaining from profit sharing (*through share ownership*) and is now opening this up to all its employees. The move will ensure the firm’s independence and will encourage further innovation and expansion, including recently, the launch of new services including pensions, regulatory and HR consultancy. Peter Doyle, ceo Doyle Clayton, one of the share vendors, explained, *”The transition to employee ownership has been a long time in the planning, including seeking approval from the Solicitors Regulation Authority to the structure of the business. We’re delighted to be one of the first law firms to transition to this ownership structure which manages to retain the best parts of the traditional partnership structure but without the associated exclusivity. The most important asset in our business is our people. All our staff need to be actively involved in improving our services and their delivery. This may be working with suppliers to reduce costs and environmental impact or helping clients - the organisations and individuals we advise to achieve their goals more effectively. Ensuring that all of our people are fully engaged in the business and in our future growth will help us to become even more innovative and in turn successful.”* The transaction, including identifying appropriate financing, was managed and arranged by Centre member **RM2 Corporate Finance**. Mr Doyle told Centre chairman **Malcolm Hurlston** “*As we move forward, we look forward to working with you and in supporting the activities of the Esop Centre and advocating the employee ownership model.”*

Treasury orders HMRC Loan Charge review

The Treasury announced that the head of the **National Audit Office**, Sir Amyas Morse, will review HMRC’s loan charge, which requires tens of thousands of employees, who avoided paying income tax and NICs on part of their earnings, to pay their tax bills in one lump sum. Chancellor Sajid Javid’s department said the *loan charge was introduced to tackle contrived schemes where a person’s income is paid as a loan which did not have to be repaid*. The review will consider whether the loan charge is an “appropriate way” of dealing with individuals who entered so-called disguised remuneration schemes. Instead of being paid a full salary subject to income tax and NICs, employees in these schemes received basic salaries, on top of which they were lent money annually - typically via an offshore trust - on terms that meant the debt was unlikely to be repaid and apparently escaping tax and NICs. Many of those affected have argued they were following the advice of employers or tax professionals. They argue that HMRC muddied the waters by failing to challenge - at an earlier stage - the legality of such ‘disguised remuneration’ schemes. Many contracted employees face huge bills and had until the end of last month to agree settlements with HMRC. The review will conclude by *mid-November*, said the Treasury, but meanwhile, the Loan Charge rules remain in force. Treasury financial secretary Jesse Norman said: “*Everyone should pay their fair share of tax. These disguised remuneration schemes are highly contrived attempts to avoid tax, but it is right to consider if the loan charge is the appropriate way of tackling them. The government fully appreciates the concerns expressed by individuals, campaigners,* and MPs who have raised concerns about the loan charge”. HMRC estimated that 50,000 people were in the schemes (of whom up to 10,0000 have settled). It has agreed settlements worth £1bn and expects to raise a further £2.2bn from the loan charge itself, which compels those affected to pay all they owe in one go.

Tax barrister and employee share schemes expert **David Pett** said in a briefing paper:

"The Loan Charge is perceived as 'retrospective' in effect, as it applies to loan arrangements made as far back as 1999. However, the charge is levied on the current, ongoing, benefit to an individual of the *lender failing to call for repayment of the loan*, that being a benefit which accrues daily for so long as it remains unpaid. The charge did not apply if the loan has been repaid in cash before April 6, this year. The loan charge imposes an immediate charge to income tax (and NICs), on a single occasion, on amounts which represent the aggregation of income accrued over up to 20 years. A reporting obligation must be satisfied by September 30. The tax, if not accounted for under PAYE, must be accounted for by self-assessment, with the deadline for submission of SA Returns being **January 31 2020** (and an earlier deadline of **October 5 2019,** for paper returns).

"In most cases, the burden of the charge falls on the individual, rather than upon the employer or client who, typically, stood to benefit from the arrangement as it meant that the net cost of the arrangement was reduced below that of paying earnings in cash, principally because of the saving of employers' 13.8 percent NICs. Whilst extant employers are primarily liable to account for tax under the loan charge, in the case of those which have ceased to exist, or are no longer the PAYE employer, HMRC is exercising power to recover the tax directly from the individual.

"Many individual participants say that it was represented to them that such arrangements were 'legitimate' and 'acceptable' to HMRC, and this understanding was reinforced by the fact that HMRC did not challenge such arrangements even when the full circumstances were disclosed to them, either by way of formal 'up-front' 'disclosures [by the promoters] of a tax avoidance scheme', or in response to enquiries opened into an individual's self-assessment return. HMRC offered deferred payment terms to those individuals with gross annual earnings of less than £50,000, but the burden on many individuals to fund the tax is very substantial and it has been reported that, in extreme cases, individual taxpayers have been driven to suicide as a consequence," added Mr Pett, of **Temple Tax Chambers**.

Executive pension contributions cut

Shareholder pressure has led 30 FTSE 100 companies cutting their pension payments for executives over the past year. Analysis of the 2019 agm season by the **Investment Association (IA),** which represents City institutions with £7.7tn worth of assets under management, revealed "significant changes" including 17 companies committing to awarding new directors pension contributions in line with the majority of the workforce. It found that four companies had reduced contributions for directors in an immediate response to guidance it had issued on the issue in February. This stated investors wanted executive directors to be paid pension contributions in line with most of the workforce. The IA warned that it would put a *Red Top* warning on the annual reports of companies which failed to share action plans to align executive pension pay with the majority of staff and continue to offer senior executive retirement benefits worth more than 25 percent of base salary. Those reports will then be shared with the IA's membership, comprising more than 250 investment management firms, before each company's agm to inform their voting plans.UK employees receive a pension worth, on average, about ten percent of their pay, which they mostly pay for themselves.

Three companies have already appointed new directors with more proportionate pension contributions and six have made multiple changes, reducing contributions for both existing and future directors, said the IA. The companies taking action to reduce executive pensions include **RBS, BT, Aviva** and **HSBC**. In April the Commons *work and pensions* select committee wrote to **Lloyds Banking Group** to ask why the pension cash contribution for its ceo António Horta-Osório, who this year will earn £2.85m plus bonuses, stood at ***33 percent*** when the maximum rate was 13 percent for other employees. In June, the bank's remuneration committee head told MPs that Horta-Osório "*works incredibly hard and he deserves that."* Almost 40 percent of **Standard Chartered** shareholder votes were cast against the bank's remuneration policy in May, which included a £474,000 pension cash allowance for ceo, Bill Winters, who then poured petrol on the fire by criticising the adverse shareholder vote as ***immature*** and ***unhelpful."*** By contrast, HSBC cut pension contributions for its top executives this year from 30 to ten percent.

Chris Cummings, ceo IA, said the increase in shareholder pressure was a major factor in the changes: "Shareholders have been very clear they want pension payments for executives to come down to the same level as the rest of the workforce and for diversity on boards to improve. We have seen a clear step-change in the market on both of those fronts during this year's agm season, which is welcomed by shareholders. Companies that do not take on board shareholder concerns risk facing yet more shareholder rebellions next year," he told *Personnel Today.*

Troughing

*Britain's tourism board faced calls for an inquiry into executives' inflation-busting pay rises and lavish bonuses. Taxpayer-funded *VisitBritain* gave ceo Sally Balcombe a six percent raise and £17,500 bonus. Her reward package was worth up to £230,000. She received the same bonus and a ten percent salary increase the previous year, despite the agency falling £61m short of its target to increase visitor spending in Britain in 2016/17. Her pay for running the quango, which has just 285 full-time staff, is the same as that of the head of the Metropolitan Police, who manages more than 42,000 employees. Her reward outstrips that of the head of the Crown Prosecution Service (CPS), which has more than 5,600 full-time staff. *VisitBritain* receives £60m in public money a year. Seven senior executives enjoy pay packages worth more than £150,000 and the same number received bonuses of between £5,000 and £20,000. A ***freedom of information*** request by the *Daily Mail* found that VisitBritain's directors ran up £164,307 in expenses from 2018/19 even as visitor numbers to the UK and the amount they spent fell. Ms Balcombe and nine directors ran up bills of £73,231.75 on air fares, £62,367.15 on hotels and subsistence, £10,771.28 for taxis and £4,728.57 for entertaining in a year. During the same period, visits to the UK dropped by two percent and spending by visitors plunged seven percent. John O'Connell, head of the TaxPayers' Alliance, said the public would be 'outraged' by the high salaries, describing the figures as 'yet another disgraceful example' of 'extremely generous' public sector pay. If there is any increase in tourism this year, it's because sterling is falling making it cheaper for tourists to visit. A spokesman for VisitBritain said: '*Last year, for every pound of public investment, the BTA delivered – equating to nearly £1bn of additional spending. Salaries and travel costs support the delivery of national economic growth at a time of uncertainty. All costs are independently reviewed, benchmarked and audited and judged against organisational performance.'*

*A charity chief is in the firing line after it was revealed his salary topped £430,000. Simon Cooke, ceo of **Marie Stopes International**, one of the UK's largest providers of abortion clinics, saw his pay increase from £173,000 to £217,250 within a year, topped up by a performance-related bonus of the same amount. The bonus was branded "obscene" by Mark Flannagan, the former ceo of Beating Bowel Cancer, who said bonuses paid to charity chiefs must be stopped. Writing in *Third Sector*, Flannagan said: "No matter how important your organisation's mission, *I cannot see how anyone can justify almost doubling what is already an extremely large salary for a charity boss."* The sum puts Cooke in the top five highest paid charity bosses in the UK although previous years saw Cooke receiving bigger bonuses of £233,303 in 2016 and £251,831 in 2015. However his salary was lower. Top salaries at bigger charities have come under scrutiny over the past few years following major scandals. Marie Stopes responded by saying it employs over 11,000 people, and manages more than £290m annually. "*The ceo's remuneration package is set by the board of trustees, as part of their duty to ensure our organisation has the best leadership in place to deliver against ambitious targets*," said a spokesperson. Accounts show that in the year to December 2018, the **RSPCA**'s highest earner took home up to £229,999, a £30,000 rise on the previous year, said the *Daily Mail*. The charity would not say who this was. Its ceo Chris Sherwood, who took up the role in August last year, is on a salary of £150,000. **Royal National Institute of Blind People**'s interim ceo Eliot Lyne was paid: £180,001 to £190,000 for year to March 2018, up from £150,001 to £160,000 in 2017. The wildlife charity **WWF UK** handed an unnamed employee £60,000 more than its ceo last year, while increasing its spending on advertising from £700,000 to £13m. The pay packet – described as a 'one-off anomaly' – was between £180,000 and £190,000. Ceo Tanya Steele was paid £137,714.

*Japanese based carmaker **Nissan** and **Carlos Ghosn,** who headed the partnership of Nissan, **Mitsubishi** and **Renault** until late last year, settled US regulators' claims that they failed to disclose more than ***$140m*** in pay to the former ceo. Nissan was fined $15m over the allegations, while Ghosn, 65, was fined $1m, the **Securities and Exchange Commission** said. The SEC said that Nissan had granted Ghosn broad authority over the company's pay decisions, with the *startling power to set compensation for himself*, other executives and directors. That ultimately led to Ghosn, with substantial assistance from his subordinates, excluding more than $90m in his own pay from Nissan's public statements to investors. Ghosn additionally took steps to increase his retirement allowance by $50m, claimed the SEC. It reached a settlement too with former Nissan director Greg Kelly, who agreed to pay a $100,000 fine over allegations that he helped hide Ghosn's pay. Ghosn was barred from serving as a director or officer of a public company for ten years, while Kelly agreed to a five-year ban. Nissan, Ghosn and Kelly, 63, all resolved the cases *without admitting or denying wrongdoing*. Nissan said that it had cooperated fully with the SEC and had "promptly implemented remedial acts to prevent recurrence." The company blamed Ghosn and Kelly, saying the executives' alleged misconduct "serves as the basis for Nissan's liability." Lawyers for Ghosn and Kelly said the decision to settle with the SEC should have no bearing on separate Japanese cases against their clients, who both face trials stemming from their alleged roles in masking their rewards. Japanese prosecutors accused Ghosn of transferring personal losses to Nissan and using company funds for financial transactions in the Middle East. Ghosn's decision to conceal his annual reward had stemmed from a 2010 Japanese rule that forced executives to disclose their total compensation. Instead of complying, and risking negative media coverage, Ghosn crafted strategies to obscure how much he received from Nissan, claimed the SEC. French prosecutors opened their own investigation into Ghosn, formerly Renault's poster boy chairman. Renault finally disclosed that Ghosn may have improperly used a company sponsorship deal to host his 2016 wedding party at the Palace of Versailles. It alerted French prosecutors to millions of euros paid by Ghosn to a distributor in Oman.

COMPANIES

*The ceo of **Berkeley Group** sold shares worth almost £12m days after the house-builder suffered a serious shareholder revolt over executive pay. Rob Perrins sold 300,000 shares, almost a quarter of his stake in the firm at £39.70 each. The move came after Berkeley's agm, when ***43 percent of its voted shares*** were placed by investors opposing the director's pay policy. The revolt came despite Berkeley's efforts to curb executive pay. The house-builder had proposed to stop handing out annual bonuses and forcing executives to keep shares paid out by its long-term incentive scheme for an extra two years, but shareholder advisory groups said the proposed measures were not enough. Perrins, who was appointed ceo in 2009, received total remuneration of £7.8m in the latest financial year. His share sale follows that of Berkeley founder and chairman Tony Pidgley who sold a fifth of his stake recently for £37.2m. **Institutional Shareholder Services (ISS)** said payouts to bosses from Berkeley's long-term incentive plan (LTIP) were "all but guaranteed" and that the targets did "not offer an adequate level of stretch." Berkeley, which specialises in upmarket London flats, put a new policy to shareholders following anger over generous payouts. Executives will be forced to hold on to shares paid out through its long-term bonus plan for an extra two years and will have to re-earn any shares that have not vested by 2021 over the following four years. ISS said Berkeley's plan to scrap its annual bonus was unlikely to affect overall levels of pay. The new policy "*fails to highlight the changing remuneration landscape*," it said, adding that Berkeley's pay structure looked "increasingly conspicuous amongst its peers." ISS's report followed that of fellow adviser Glass Lewis, which warned that scrapping the annual bonus could encourage executives to focus on shareholder returns rather than long-term investment. A Berkeley spokesman said: "Major shareholders consulted by Berkeley provided a positive response to the proposed changes."

***Barratt's** ceo received an £893,000 reward rise this year, taking his total annual remuneration at Britain's biggest house-builder to £3.6m. David Thomas's salary and benefits edged up £27,000 to £949,000, while his bonus and incentives jumped £866,000 to £2.66m, Barratt's annual report revealed. The increases came despite annual revenues at the FTSE 100 builder dipping 2.3 percent to £4.8bn. However, the revenue decline was offset by higher profit margins, with pre-tax profits rising nine percent to £910m. Executive pay at UK house-builders is under fire, with accusations that profits are being driven by the taxpayer-funded *Help to Buy* scheme, rather than ceos' leadership. Richard Akers, chair of Barratt's remuneration committee, said that the ratio of ceo pay to the median employee was 88:1 and that it was reducing the size of annual cash payments for executives' pensions - a flash point for some investors - to 15 percent of salary from 25 percent hitherto. For new executive joiners as of July 1, the maximum pension contribution has been reduced further, to ten percent of salary, equal to the maximum employer contribution available to the workforce.

*The ceo of **British Airways** was criticised for increasing his salary by £530,000 while asking pilots to 'return to the negotiating table' after they began a two day strike over pay. On *Good Morning Britain*, BA's ceo Alex Cruz was asked how he could justify his own pay increase 'from £830,000 last year to £1.36m', which is 'a lot more than the 11.5 percent being offered to BA pilots'. Social media users condemned his pay rise of 'over 50 percent' and said they could sympathise with striking pilots. One wrote: '*Honestly can't believe the amount of people slagging off BA pilots and saying they're greedy*. *'Alex Cruz, ceo, is on £1.36m a year and has never once delivered a passenger safely to their destination! He gladly accepted a 61 percent pay rise in 2017.'* British Airways had to cancel almost 100 percent of flights following the decision by members of the British Airline Pilots Association (Balpa), to begin a 48 hour strike over pay. The company offered a pay rise of 11.5 percent over three years, taking the pay of a few captains to more than £200,000. However Balpa has said that pilots should be remunerated with higher pay packets, with many initially taking pay cuts, given the recent profits that BA has made.

Dixons Carphone** issued a quarterly trading ahead of its agm of shareholders where almost a quarter of investors' voted holdings - ***23.4 percent – were placed against the remuneration report. The company said it "acknowledges that a significant minority of shareholders did not support" the resolution on pay. It said its remuneration committee would "seek to consult further with shareholders to understand and discuss the specific rationale for any votes against our report.The remuneration committee recognises that the appropriate incentivisation of a new management team embarking on a major transformation of the business is a difficult judgement." Ceo Alex Baldock and new fd Jonny Mason had their cash bonuses deferred into shares which will not vest for two years, the company said. "The executives volunteered to do this as they were mindful that the performance of the business and the progress that is being made with the transformation is not reflected in the current share price and this was done in order to align themselves with shareholders."

***Goldman Sachs** ceo David Solomon was paid $23m last year, only *a third* of what his predecessor received in 2007. Other Goldman employees didn't fare much better, as compensation per employee fell by 61 percent at the Wall Street bank, when adjusted for nominal wage growth in the period, according to Bloomberg. Goldman had the sharpest pay decline among a dozen of the largest US and European banks, followed by **Credit Suisse** at 46 percent.

***Hasbro**, the US toymaker behind My Little Pony and Play-Doh, gobbled up *Peppa Pig* owner, **Entertainment One**, in a £3.3bn takeover. The deal, which sent Entertainment One's share price soaring, marks the latest UK-listed company to be targeted and acquired by a foreign buyer since the dramatic weakening of the pound over fears of a no-deal Brexit. Hong Kong's richest family bought the 220-year old pub and beer company **Greene King** in a £4.6bn deal. The US private equity group **Advent International** agreed a £4bn buyout of the UK aerospace and defence supplier **Cobham** (*now being reviewed on security grounds*) and the Dutch-based **Takeaway.com** agreed a £5bn takeover of the UK-listed food delivery rival **Just Eat**. Last summer, **Merlin**, which operates attractions including Alton Towers, Madame Tussauds and Legoland, was taken private by a consortium including the family that controls Lego. The satellite company **Inmarsat** fell to a private equity led takeover earlier in the year.

*'Employee owned' **John Lewis Partnership** suffered a half-year loss and warned that a no-deal Brexit would have a "significant" impact on its business. The retailer said while it had prepared for a no-deal Brexit, it would not be able to fully offset the effect. The group, which owns the department store chain and Waitrose supermarkets, reported a loss of £25.9m, down from a profit of £0.8m last year. The partnership, which normally makes most of its profits in the second half of the year, said it had been making preparations for a no-deal Brexit, including building up stocks "where that is sensible." The partnership's chairman, Charlie Mayfield, said: "Should the UK leave the EU without a deal, we expect the effect to be significant and it will not be possible to mitigate that impact" The company's 83,900 employees, referred to as partners, received a bonus payout of three percent of annual salary, down from 18 percent in 2011. Their gold-standard pension scheme has been cut too. The group gained a £249m one-off benefit from the closure of the defined benefit scheme, but head office job losses are looming.

*Software giant **Micro Focus** said full-year revenues would be down between six and eight percent, compared to previous estimates of a four to six percent fall. Shares plunged on the news, down 31 percent at one stage. The company sells software to banks and retailers which use legacy IT systems. A year ago, revenues were $4.1bn (£3.36bn), meaning an eight percent fall would take sales to $3.7bn (£3bn). The board at the FTSE 100 firm will now speed up a review of operations to look for "strategic, operational and financial alternatives" in a year that saw shareholders vote down the company's pay report in protest against huge bonuses. In July, the company said more work was needed on integrating **Hewlett Packard**'s software division, which includes the remnants of British software company **Autonomy**, following the £6.5bn purchase in 2017. Just two days after the results, it emerged that executive chairman Kevin Loosemore pocketed £11.6m after selling off more than half his stake in Micro Focus. Shareholders narrowly voted down the remuneration report earlier this year, after heavy criticism over a massive £110m bonus plan for executives. Investors were angry at the board's decision to give senior executives an extra year to hit a share price target that would trigger the payouts.

***Hiroto Saikawa** resigned his post as ceo of Japanese carmaker **Nissan** after accepting that he had been overpaid as part of a company compensation scheme, but denied any wrongdoing. Saikawa was accused of receiving hundreds of thousands of dollars worth of extra stock option payments in 2013. He told Japanese media he would return the money he had wrongly received. It is the latest twist in a saga plaguing the carmaker that centres on improper payments to top executives. Mr Saikawa was accused of improperly boosting his compensation in 2013 by 47m yen (£359,869) as part of a stock appreciation rights scheme, according to media reports. Such schemes tend to link bonuses with the performance of company stocks over a fixed period. *Mr Saikawa reportedly delayed his bonus payout by a week to benefit from a stock rise*, reports said. “The operation of the [scheme] was different than it should have been,” Mr Saikawa told Japanese media. “I thought the procedures were handled properly and I didn’t know [about the misconduct].”

*Almost half of **Ryanair**’s shareholder votes at the agm went against a pay deal for **Michael O’Leary** that could hand the ceo **€99m** (£88m). Just ***50.5*** percent of investors’ holdings were voted in favour of the company’s remuneration report. The revolt came at a difficult time for Ryanair which is facing more strike action from pilots and is cutting jobs. Following the vote, a spokesman said it would consult with its investors. He said: “Ryanair is, and will continue, to consult with its shareholders and we will report back to them over the coming year on how the board will adapt its decision-making to reflect their advice and input on all these topics.” Earlier this year, Mr O’Leary signed a new contract to stay on as ceo until 2024. Under its terms, he stands to make €99m from stock options if he doubles Ryanair’s profit or share price. O’Leary’s pay and the maximum annual bonus have both been cut in half to €500,000, but he was granted 10m share options. These are shares he can acquire for €11.12 and then sell at the market price if Ryanair’s profits hit €2bn in any year up to 2024 or its share price reaches €21 for a period of 28 days from April next year. He would then pocket the difference. Its shares are trading at c. €9.84. Ryanair noted that his remuneration is “considerably lower than many other European airline ceos”.

Thomas Cook (defunct)**: Transport secretary, Grant Shapps, suggested that the directors could have some of their bonuses seized or be disqualified from serving as directors after the tour operator’s collapse into liquidation. However, most of the £4.6m in bonuses paid to ceo Peter Fankhauser were awarded in shares, which he said he did not sell and which would be now worthless. It is difficult for the receiver to seize bonuses or for directors to be barred from holding similar positions in future, despite a collapse that cost 9,000 employees their jobs and left 150,000 passengers stranded overseas. Thos Cook’s legal contract with directors allows claw-back of bonuses only in restricted circumstances, such as mis-statement of finances or gross misconduct. Since merging with *MyTravel* in 2007, Thomas Cook had paid £1.1bn in interest payments to its bankers. ***£20m worth of bonuses, awarded to top executives during the last five years, are under scrutiny, as business secretary Andrea Leadsom demanded an investigation into the directors’ role in the liquidation of the company with a **£**3bn balance sheet deficit. Fankhauser received a £2.9m bonus in 2015, linked to the company’s stated profits, under an incentive plan signed off after its 2011 rescue, During his five years at the helm its share price plunged 97 percent, from £1.7bn to just £69m. Thomas Cook claimed that a large chunk of losses in its accounts were one-off costs that did not reflect the underlying strength of the business. In 2018 the company booked £153m of one-off charges, which it said were due to the cost of starting new ventures and restructuring the company. Ex-fd Michael Healy received a £2.4m bonus the same year. £1.6bn of retirement obligations will be transferred into the **Pension Protection Fund** (**PPF)** upon insolvency, meaning payments to most Thomas Cook pensioners will be cut by ten percent and a new maximum pension imposed of £40,000 a year, so pilots and others will suffer heavier pension losses. The **Financial Reporting Council (FRC)** issued a revised *Going Concern* standard requiring UK auditors to follow stronger requirements than those in current international standards, said *the Guardian*. The revised standard requires: *more work by the auditor to robustly challenge management’s assessment of going concern and thoroughly test the adequacy of the supporting evidence; *a new reporting requirement for the auditor of listed and large private companies to provide a clear conclusion on whether management’s assessment is appropriate and *a stand back requirement to consider all the evidence obtained, when the auditor draws conclusions on the *going concern* question. The FRC is considering whether to investigate Thos Cook’s liquidation and impose punishments if necessary. The FRC, criticised for not doing enough, is to be replaced by an independent statutory regulator, accountable to parliament, with a new mandate and new powers, called the **Audit, Reporting and Governance Authority (ARGA).** HMRC ceo, Sir Jonathan

Thompson, will head Arga and **GSK**'s former cfo, Simon Dingemans, is appointed as the new chair. Both are due to start this month.

WORLD NEWSPAD

China: Employee stock ownership fan **Jack Ma,** chairman of **Alibaba** and dubbed China's Steve Jobs, stepped down from the e-commerce giant, marking the end of an era. Jack, not to be confused with super Eso fan **Pony Ma** of **Tencent** fame, co-founded Alibaba in 1999 and it became one of the world's biggest internet firms. Ma's success and colourful style made him one of China's best known businessmen. Alibaba is valued at £389bn and Mr Ma is China's richest man, with a net worth of $38.6bn according to Forbes. He is the first founder among a generation of prominent Chinese internet entrepreneurs to step down from his company, though he still owns 6.2 percent of its equity and will remain on the board until the 2020 agm. Many more paper millionaires would be minted once employees were free to sell shares some time after an actively sought ***second*** IPO listing takes place. Current and former Alibaba employees hold 26.7 percent of the company, having built up their holdings through stock options and other incentives awarded since 1999, revealed securities filings. The second IPO windfall - Alibaba could be worth **$152bn**, according to the average from a Reuters survey of 25 analysts - will be larger than anything China has seen because of the depth of the group's employee ownership and the size of the company. Not just managers, but software engineers and staff from sales and marketing and related companies, such as Alipay, stand to benefit from selling shares after the listing. Some of the 20,000 employees have already sold part of their stakes during previous Alibaba structured share sales through liquidity programmes. Before its first IPO in 2014, Alibaba counselled employees on how to deal with the $41bn they could unlock through a New York listing. While some staffers have enquired if premium brand BMW sells cars in Alibaba's corporate orange, others may invest windfall stock gains in property in the US or channel funds back into start-up ventures in China, hoping to build future Alibabas, bankers and financial planners say. The company, though, has been preparing employees for years on how to manage the avalanche of cash, warning them not to be carried away and splurge on material goods.

"I think it will be very hard to replace somebody like Jack Ma," said Rebecca Fannin, author of a book on China's technology titans. "He is one of a kind. *He is the Steve Jobs of China.*" Born to a poor family in the eastern Chinese city of Hangzhou, Ma began his career as a teacher. He bought his first computer at the age of 33 and was surprised when no Chinese beers turned up in his first online search for "beer". With no background in computing, Ma co-founded Alibaba in his apartment, having convinced a group of friends to invest in his online marketplace. Alibaba has grown from an online marketplace into an e-commerce giant with interests ranging from financial services to artificial intelligence. It was set up as a trading platform for businesses, before expanding into consumer e-commerce in 2003 and later launching digital payment platform Alipay. Earlier this year, Ma argued in favour of the "996 system" where workers are expected to work 12 hour days, and a six-day week - a hotly debated topic in Chinese media. The flamboyant businessman is known for enjoying the limelight and featured at an Alibaba event in 2017 wearing a Michael Jackson-themed outfit. Ma has previously said he would now turn his attention to philanthropy, focusing on education in rural areas. "*The thing I want this company to never forget – because we are at today's size – a lot of companies, I learned why they fail,*" Ma said in a farewell video. "*They forget about dreams. It's the dreams that keep us working hard. Its dreams that keep us never afraid of mistakes … of setbacks.*" Daniel Zhang, currently Alibaba's ceo, is replacing him as executive chairman.

* Christian Sewing ceo of **Deutsche Bank** will spend 15 percent of his monthly salary buying shares in the troubled German lender for the next three years as he attempts a radical restructuring of the ailing bank. Sewing will buy around €21,250 (£19,322) of shares on the 22nd of every month. It fulfils a promise he made in July to invest a substantial amount of his fixed net salary in the bank. Mr Sewing's annual reward is €3.4m excluding bonuses. Last year his total reward package was worth €7m. When the share purchase scheme ends in 2022, Sewing will have invested €850,000 of his money in Deutsche. The bank's downfall from a global titan to a struggling lender has resulted in its share price falling to its lowest point - €5.78 - in its 149-year history. Deutsche has failed to recover since the financial crisis in the face of heavy fines for past misconduct, sluggish performance, sweeping restructuring costs and competition from Wall Street peers. It has come under fire from investors for allegedly failing to act quickly enough.

Finnish** minister **Sirpa Paatero** lashed out at the lavish salaries and bonuses paid to the top management of national mail carrier **Posti**, which is wholly owned by the Finish state. Posti's ceo is earning an annual reward package close to **€1m** while postal workers earning around €2,000 per month were facing 30-50 percent pay cuts this autumn in the name of competitiveness. Minister of Local Government and Ownership Steering, Ms Paatero, said that the government would review the remuneration of top management at Posti. She added that the state may decide to take out smaller dividends paid to it by Posti. Paatero said salaries paid to executives had been ***excessive and that further negotiations between the postal workers' union (PAU) and employer representatives would take place this autumn regarding any changes to postal workers' collective agreement. In just four years, Posti ceo Heikki Malinen's annual reward, including bonuses, had risen 65 percent to €990,000. Following public outrage, Malinen said he was willing to waive two months' pay this year. Meanwhile management was planning to cut postal workers' salaries by shifting them to a new pay structure. The postal workers' union PAU said the new pay structure would effectively reduce 700 employees' pay by an average of 30 percent, and in some cases up to 50 percent by November.

Greece:** There was bewilderment after **Hellenic Data Protection Authority (HDPA**) fined *PwC Business Solutions* €150,000 and ordered the company to take corrective action following an investigation that uncovered breaches of Article 5 of the **General Data Protection Regulation (GDPR).** The probe revealed that the company was requiring employees to give their consent for the processing of their personal data at work, because passive consent is no longer enough. The HDPA decided that this was not the appropriate legal basis for processing this employee personal data, noting that: "*Consent of data subjects in the context of employment relations cannot be regarded as freely given due to the clear imbalance between the parties.*" However, the ruling was greeted with incredulity in some quarters, as GDPR states clearly that companies cannot assume that employees have given their passive consent to some personal details (typically address, DoB, mobile phone number, tax status and whether or not he/she is an employee shareholder etc) being held on their employer's data base. ***The implication of that is that under GDPR employers must contact their employees to ask for permission to store such data – but, apparently, such contact may be judged illegal after this ruling. Dublin based law firm *ByrneWallace* – gave a tortuous explanation of the ruling: "*It is a common misconception that data controllers must always seek the consent of a data subject before the data controller may process the subject's personal data. Further to the GDPR, consent is only one among a number of legal bases for processing. If there is a different basis for processing available then consent is not necessary. If consent is not necessary (because there is another legal basis for processing) then consent should not be sought*. In this case, the HDPA found that the choice of consent as the legal basis was inappropriate and that other bases under Article 6 were more appropriate e.g. the processing was necessary for the performance of the employment contract (Article 6 (1)(b)) or the processing was necessary for compliance with a legal obligation to which the company was subject (Article 6(1)(c)). The HDPA ruled that the company was in breach of its transparency obligations under Article 5 of the GDPR in giving employees the false impression that it was processing their personal data under the legal basis of consent. In addition to the administrative fine, the HDPA gave the company three months to bring the processing operations of its employees' personal data into compliance with the provisions of the GDPR. This case acts as a warning for employers who have yet to update their employment contracts and policies to reflect a legal basis other than consent for the processing of employee personal data." *Work that one out, if you can.*

***Irish** minister of state at the Department of Finance Michael D'Arcy indicated the government will stand firm on pay restrictions across bailed-out banks, even as industry chiefs and regulators have warned of challenges hiring and retaining key staff amid mounting competition from firms setting up in Dublin due to Brexit and technology companies. "I've always been of the view that the bankers in those institutions are well paid," Mr D'Arcy said in an interview with *Bloomberg TV*, noting that the €500,000 pay cap for top executives is at the "very, very top percentile of anybody earning in Ireland". When asked if the government will ease pay caps as it considers a consultants' report, Mr D'Arcy said: "I'm of the view the decision's made." Minister for Finance, Paschal Donohoe, hired *Korn Ferry* last October to review the pay limits and an outright ban on bonuses in the three taxpayer-rescued lenders, **AIB, Bank of Ireland** and **Permanent TSB.** While Mr Donohoe received the final report in mid-June, which is said to call for an easing of the restrictions, he has yet to bring it to cabinet. The removal of an 89 percent prohibitive tax charge on bonuses would be very difficult to push through politically, especially as the industry continues to grapple with the tracker-mortgage scandal and the current minority government faces a possible general election next year.

Oz: Australia's top ceos continue to rake in hefty bonuses on top of their salaries, new analysis shows, despite last year's banking royal commission report undermining public confidence in the business sector. However, a report by the Australian Council of Superannuation Investors (ACSI) noted a trend in which companies were lowering the base pay for incoming ceos, deferring benefits and introducing claw-back provisions to deal with poor performance. The study found that only one ASX100 ceo who was eligible for a bonus missed out in the 2017-18 financial year – Don Meij, the head of scandal-plagued **Domino**'s. It found that the median bonus for an ASX100 ceo was A$1.6m (£868,400) the second-highest in the report's 18-year history. The number of bonuses handed out to those eligible, meanwhile, was a record for the survey. "*It doesn't seem credible that all ceos except one performed above expectations,"* said Louise Davidson, the ACSI ceo. The study investigated "realised pay", meaning cash and the value of equity vested that year. It found: The median ASX100 ceo got **70 percent** of their maximum bonus entitlement; the median realised pay for an ASX100 ceo hit A$4.5m. The report said that of the 158 ceos whose pay was examined, "147 were eligible for an annual bonus and of this group 140 received a bonus."

*The average annual reward package for Australian university vice-chancellors now stands at A$982,900 (£543,800), *Times Higher Education* analysis shows.

***Start-ups** want the government to expand Australia's employee share scheme programme, claiming the current model is deterring global talent from coming to Oz. In November 2018, ministers promised to expand the share ownership programme so small businesses could offer staff shares worth up to A$10,000 (£5,587) in a company each year, but progress on this has stalled. Start-up and investment groups said Australia's access to global talent is being hit while the country waits for reforms. "*There's no question that our employee share ownership plan regime currently acts as a handbrake on Australia's ability to attract the best and brightest,"* head of the Australian Investment Council, Yasser El-Ansary, said. Under the current scheme, unlisted Australian businesses with up to A$50m turnover can offer shares worth up to A$5,000 per year to employees, provided they meet a strict set of regulatory criteria including disclosure documents. The regulation is designed to balance the risks to employees from having shares as part of their pay packets, though smaller operators say the policy is too difficult to access. Assistant treasurer Michael Sukkar said the government was "currently considering stakeholder feedback" on the reforms after a treasury consultation in April. "The proposed changes build on improvements the government has already made to make employee share schemes more attractive, including improving the taxation treatment of Eso and limiting the requirement for disclosure documents," Mr Sukkar said. Industry association AusBiotech said the current policy was too restrictive for life sciences companies because businesses needed to be less than ten years old to offer shares, and many biotech businesses took longer than this to develop. AusBiotech supports a more sympathetic treatment of start-up companies, to support the growth of the Australian innovation sector," AusBiotech ceo Lorraine Chiroiu said. In May Treasury asked for feedback on reforms to the policy, including making it easier for small businesses to offer their staff shares without having to publicly disclose sensitive financial information about the company. The Australian Investment Council argued that the value of shares offered should increase from A$5,000 a year up to A$20,000 a year to account for the ability of global tech businesses to offer their staff a bigger slice of a business as part of their salary package. A 2017 paper from the Department of Innovation and Science found less than one percent of private companies offer their staff shares. However, companies that did use the scheme had "*lower employee churn, higher sales, higher value added, higher labour productivity and higher value added growth,*" the report said.

***South Africa**: The government approved a policy directive which cracks down on inflated executive bonuses at state-owned enterprises (SOEs) like Eskom and the SABC, according to a report by the *Sunday Times*. The directive requires that all future bonuses and incentives be based on income statements rather than balance sheets, meaning that many executives at struggling SOEs could lose their bonuses entirely. "*There have been SOEs in the past where the incentive system is built around the balance sheet, not the income statement, which means when they get a bailout it stays on the balance sheet and then they get big bonuses,*" the head of the policy unit in the presidency, Busani Ngcaweni, told the Sunday Times. "It cannot be that you earn so much in bonuses over time and the only indicator you use to earn maximum [bonuses] has nothing to do with the performance of that institution," Ngcaweni said. The policy directive will prevent executives from receiving inflated bonuses due to government bailouts, which is aligned with the aim of the Presidential Review Committee on SOEs. The review recommends implementing more stringent criteria for board appointments, requiring candidates to have the relevant qualifications and experience to sit on the board at SOEs. State-owned enterprises in South Africa are floundering under crushing debt and the effect of years of corruption at the highest level. Both Eskom and the SABC have received government bailouts to continue functioning, although their economic outlook remains grim. Political scientist and journalist RW Johnson argued that money handed to Eskom is simply a waste, as it would be used to pay inflated salaries to executives and unnecessary workers, as well as to finance corrupt deals. He said that Eskom required big job cuts, a purge of corrupt deals, the sale of many assets, and an end to cadre deployment if it ever hoped to recover from its financial problems.

US: *Infuriating, unfair, repulsive. Those are some of the printable words used by former employees of **Philadelphia Energy Solutions (PES)** when they learned that their senior executives were awarded **$4.5m** in bonuses collectively before PES filed for *Chapter 11* bankruptcy. Employees who gathered at a Philadelphia Refinery Advisory Group meeting were among the more than 1,000 who were laid off with no severance pay or extended medical benefits by the end of August, after working at the refinery complex for years. Some have been unable to access their pensions, claimed their union. Meanwhile, PES ceo Mark Smith, in the job only since August 2018, received a $1.54m retention bonus, reported *Reuters.* "Big bank for just a year," said Ryan O'Callaghan, who headed **United Steelworkers** local at the refinery and is now out of work himself. "They stuffed their pockets while they walked — and had already walked — people out the gate, without any compensation for a life's time of work. It's infuriating. These corporations, they feather their own beds all the time." *The bonuses were paid on July 5, two weeks after the explosion and fire that ultimately shut the facility down, and just weeks before the company filed for Chapter 11, according to documents filed with the bankruptcy court.* Others receiving bonuses of over $300,000 include vice president John McShane; cfo Rachel Celiberti, who received an extra $75,000 spot bonus; deputy staff attorney Anthony Lagreca, who got a $50,000 spot bonus and Billy Goodhart, a human resources consultant who received $363,340 in 10 months working for the refinery while living in Texas — $295,646 for professional services, $56,651 for travel expenses, and $10,043 for other expenses. Philadelphia Energy Solutions refused to comment.

*The judge in the **PG&E** bankruptcy case rejected the company's plan to hand out up to **$16m** in executive bonuses this year, saying he saw no basis to give up to a dozen executives more money to "*do what they should already be doing*" in bolstering safety and preventing wildfires. A failure of one PG&E power line in November last year caused the ***'Camp Fire'***, ***which killed more than 80 people and destroyed the town of Paradise.*** Judge Dennis Montali found the company had failed to show the bonuses, as proposed, would add anything to improve safety, noting that the company routinely handed out bonuses for the last decade – even in the last two years of devastating wildfires. PG&E had argued that its plan properly factored in both safety and financial performance and was necessary to retain leaders during the turmoil and keep their salaries in line with other utilities. It said it would not guarantee bonuses, that they would range from a low of $5m to a high of $16m, depending on whether the executives met set goals. However, Montali said in his ruling that he could not see any direct link in the plan and safety. The metrics were at least partially what some would call a 'lay-up', the judge said, noting that even PG&E acknowledged it awarded bonuses for meeting goals every year during the last decade – even during the two years of devastating wildfires. "It is simply unclear at this stage" whether PG&E's bonus plan can be justified, given the "formidable challenges" the company faces and the already strong pressure to drastically improve its safety record, the judge said. The top executives, the judge said, "should be satisfactorily motivated by this laundry list of pressures to reform" the company and "should not require the promise of more cash to bring debtors up to the task.".

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