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it's our business

newspad of the Employee Share Ownership Centre

Asda Sharesave Pay Out Bonanza

More than 16,500 employee shareholders at Asda are in line for a £43m payout under the chain’s maturing SAYE-Sharesave scheme. Staff will receive a 53 percent return on their total monthly savings in the largest payout since Asda was taken over by Wal-Mart ten years ago.

Staff saved between £5 and £250 per month, receiving a tax-free bonus at the end of their three-year savings contract. They could buy shares in Wal-Mart at the 20 percent discounted price equivalent of £20.80 each and then opt to keep or sell the shares. As Wal-Mart shares changed hands at the equivalent of more than £30 a week ago, staff who saved the maximum of £250 per month for the past three years will collect about £13,800 from the £9,000 they saved. Their profit under the latest scheme was boosted by the strength of the US dollar against the pound — which raised the value of WalMart shares in sterling, but employee participants had to move quickly as sterling staged a recovery in world currency markets.

Caroline Massingham, Asda's HR director, said that of those staff participating in the three-year scheme maturing this year, 95 % had opted to sell their shares. She said: "More than 200,000 colleagues have already benefited from Asda Sharesave but this year marks our biggest ever payout since we were taken over by Wal-Mart in 1999. Our colleagues drive the success of this business and Sharesave ensures they also reap the rewards.” The average payout would be £2,737, compared to an average payout of £2,185 when the last three-year scheme matured a year ago. Then around 17,000 staff collected a £38m payout. Ms Massingham said that of those staff opting to cash in their shares immediately, just under half planned to spend the proceeds on a holiday. Around 13 percent intend to use the cash on home improvements, seven percent on visiting friends or relatives overseas and six percent on weddings. Other planned activities include buying second-hand tractors, attending Elvis conventions in Las Vegas and buying gravestones. Ms Massingham added that two percent planned to spend their windfall cash on cosmetic surgery and other personal makeovers. About 57,000 of Asda's 165,000-strong workforce are saving in the supermarket's Sharesave plan at any one time.

From the Chairman

You really couldn't make it up...... just when you thought you'd heard all there was to hear about bankers' bonuses and pilfering politicos, along comes the Financial Services Authority, awarding staff bonuses totalling almost £20m - a 40 percent rise in bonus awards compared to the previous year.

Was this the same FSA which failed to blow the whistle on dubious trading in CDOs etc ('poisoned debt' packages) by various investment banking departments which it was supposed to be supervising? We now know that in a banking stress test carried out by UK regulators - including the FSA - in 2004, Northern Rock was identified as the weak link in the banking system - but nothing was done at that time to rein in its lending practices or investment strategy.

In the words of senior Lib-Democrat MP Don Foster - who doggedly unearthed this latest bonus revelation, by applying under the Freedom of Information Act - "Given the crisis we have seen in the financial services industry, I find it utterly bizarre that the FSA is actually paying bonuses to anyone this year. Bonuses should only be paid when someone has performed beyond the call of duty."

Malcolm Hurlston

Auto union to save General Motors & Chrysler

The United Auto Workers (UAW), the normally militant union, has played a key role in forging a deal which looks like saving General Motors (GM) from the scrap heap - and in return will gain a large stake in the company. Now the GM crisis is shifting the relationship between union and management.

The UAW is set to gain a seat on the board of the restructured GM and a 20 percent equity stake, as well as a say in future business decisions. The UAW has accepted cutbacks in pay and other benefits, and agreed that a substantial portion of its £21.7bn benefits plan would be funded by GM stock - which could be worthless if the company does not survive.

In a letter to all UAW members at GM, Ron Gettelfinger, the union president, said that "we realise that the proposed viability plan requires painful, unprecedented sacrifices from UAW members" but "faced with the dire situation and realising that a failure to meet the government 's requirement would surely mean the end of General Motors," the union had no choice but to agree a new deal.

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However, thousands of US and European auto workers incurred real or paper losses on their employee shareholdings as a result of GM's Chapter 11 bankruptcy and the sale of Chrysler to a consortium led by FIAT. Even though GM was expected to re-emerge phoenix-like following a drastic re-organisation, the 'new' GM would be more than 60 percent government owned and existing shareholders would be heavily diluted.

The new UAW contract covers about 54,000 hourly employees at 46 GM factories across the country. GM's market capitalization had shrunk to $530m, or one percent of what it was in 2000. Since 2005, the company has lost nearly $90 bn. In recent weeks, GM executives have sold several hundred thousand shares. Last month, the manager of GM's employee stock fund covering nearly 30,000 employees and other participants sold all its GM stock, or about 75m shares, on growing bankruptcy concerns. The employees' shares were sold over a 25-day period at an average price of $1.87 each, miles below what they had been worth even two years ago. Once GM filed under Chapter 11, its shares became essentially worthless," wrote Efraim Levy, auto manufacturers and parts analyst for Standard & Poor's Equity Research.

GM no longer has shares of its own stock in the 401(k) plans of its employees and retirees. Tom Wilkinson, GM spokesman confirmed that the GM shares were sold starting March 31 until around April 24. The money went into investments selected by employees or retirees or into default options. He said it was worth noting that GM had encouraged employees to diversify their 401(k) investments for a number of years. GM employees would be able to own or purchase company stock on their own.

The approved sale of Chrysler gives FIAT 20 percent of the new equity, a union trust gets a controlling 68 percent and the US and Canadian governments share the remaining 12 percent.

Sergio Marchionne's first days as Fiat CEO were marked by fear at the company's headquarters, as some top managers saw their careers abruptly end in a 20-minute chat. He has already said similar changes are needed at Chrysler, which he will soon be running. Marchionne's bold conquest - a deal for 20 percent of Chrysler, to rise to 35, with not a penny down but in exchange for Fiat technology valued at some $8bn, was made possible by the financial crisis that has crippled the auto industry. The UAW is due to get a 55 percent stake in Chrysler through its union trust fund when it emerges from bankruptcy.

SAYE bonus rate at record low

HBOS EES was the quickest to inform the Centre that the newest SAYE bonus rates, which came into effect at the end of last month, are the lowest on record. For a three year SAYE at maturity the bonus will be a mere 0.3 percent X the monthly rate, as compared to 2.4 percent 18 months ago. The recent steep fall in the bonus rate echoes the fall in BoE base rate to 0.5 percent. There was another first, as the 14-day notice of bonus rate change to savings carriers came from HMRC, rather than the Treasury, as hitherto was the case.

	Interest rate 1st anniversary until maturity	Bonus at maturity X monthly rate			Equivalent rate of interest per annum		
		3yr	5yr	7yr	3yr	5yr	7yr
Scheme V 1/9/08 to 26/12/08	3%	2.4%	7.0%	12.7%	4.23%	4.36%	4.28%
Scheme W 27/12/08 to 16/2/09	2%	1.5%	4.8%	9.3%	2.67%	3.04%	3.20%
Scheme X 17/02/09 to 28/5/09	0.5%	0.6%	2.6%	5.6%	1.08%	1.67%	1.98%
Scheme Y 29/05/09 onwards	0.36%	0.3%	2.2%	5.2%	0.54%	1.42%	1.84%

On the move

Damien Knight, one of the U.K.'s top remuneration consultants, has left Watson Wyatt and joined **MM & K**, the leading independent remuneration consultants. Damien has over 30 years of experience of working with companies helping them with their remuneration and human resource problems. His specialises in executive compensation and was a director of the Hay group where he worked for 20 years. Paul Norris, ceo of MM & K, said: "We are delighted to welcome Damien Knight to MM & K. Our model is to provide each client with a source of director level expertise and experience- Damien's appointment is a further step towards consolidating MM & K's position as the leading provider of high quality independent advice on executive pay and reward." It now has four principal consultants (Damien Knight, Nigel Mills, Paul Norris and Cliff Weight) able to work with companies of all sizes in all sectors, across the range of executive compensation issues. www.mm-k.com

From mid June, Centre member Pinsent Masons LLP's Manchester office is moving to the Spinningfields district at: **3 Hardman Street Manchester M3 3AU**. Only its address will change. All other details will remain the same

Cannes July 9 & 10: questions of executive reward, regulation and international employee equity plan logistics feature strongly in the Centre's 21st annual conference, which takes place at the Majestic Hotel on the Cannes seafront. The brochure, which contains the full speaker programme, can be downloaded from the Centre website at: www.hurlstons.com/esop and click onto the 'events' tab. You still have time to book your place(s) online, or by email to Fred Hackworth at: fhackworth@hurlstons.com. Patrick Neave, the Association of British Insurer's senior remuneration analyst, will update delegates as controversy continues over executive bonuses and other forms of incentive reward. The ABI is concerned that the Government is not getting the right advice about reform of executive reward structures. An intriguing case study from Centre member Pearson plc, the global media group, will be another highlight. Pearson's share plans manager Gabbi Stopp will tell delegates what plan issuers look for when they conduct their 'beauty parades' - putting out to tender the administration of their employee equity schemes. There will be a joint presentation by Alvarez & Marsal Taxand

and by Garrigues of Spain about the impact of post-recession regulation on Spanish employee equity plans. The companies speaking include: Australian Employee Ownership Association; Alvarez & Marsal Taxand UK; ABI; Bird & Bird ; Capital Analytics; Capita Registrars; Equiniti; Garrigues (Spain); Global Shares; Greenberg Traurig (USA); Hewitt Associates; Investec Trust Group; Macfarlanes; Minter Ellison; Pearson plc; Strategic Remuneration and The Esop Centre. There will be open floor debates on executive reward and potential employee share ownership remodelling.

UBS software platform

UBS Corporate Employee Financial Services (CEFS) has added a software utility to its technology platform to facilitate fast and secure data exchange with clients who seek equity compensation plan services for employee stock options, restricted awards/units, stock appreciation rights and employee stock purchase plans, and other related services. The new software enhances CEFS' ability to offer execution-only and partial administration service models. Designed for companies using Transcentive's Express Options™ and Express Stock Purchase™ equity compensation plan administration software, it fully automates what until now have been largely manual information management processes.

Bonuses are back….

Expect a rebound in bonuses for 2009 on the back of strong first-quarter earnings, said a report issued by pay consultants Johnson Associates. Bankers in equities, fixed income, currencies and interest rates could see an increase of between 20 to 30 percent on 2008 bonuses, while multi-year guarantees are also flooding the market, it said.

But investors are still angry….

Shell's shareholders voted down the directors' remuneration report after it gave top executives substantial numbers of shares under a long-term incentive plan, plus bonus shares relating to another plan, even though the company missed an important performance target for the period 2006-8. Almost 60 percent of its shareholders at the AGM, including the institutions, voted down the proposal to approve the controversial award, but under governance rules, the vote is advisory only. It was a public-relations disaster for Shell and a warning to every company that shareholders will not tolerate discretionary pay awards when performance targets are flunked. Changes are being demanded after a decision to pay £3.65m in bonuses (on top of their salaries etc) to executives despite missing performance targets. As head of the remuneration committee, ceo Peter Job waved the payments through. The bonus plan was based on Shell's three-year share performance relative to a group of rival firms. It finished fourth, meaning that technically executives were entitled to nothing. But because Shell lagged its closest rival, France's Total, by less than 2 percent, payments equal to 50 percent of base salary were approved by the remuneration committee. It was the second consecutive year Job had approved payouts despite Shell's underperformance.

Another company under attack from shareholders at its AGM was WPP, which asked shareholders to approve a five-year scheme that could see ceo Sir Martin Sorrell scoop up to €uros 68m. The advertising group moved its HQ to Ireland in protest at the UK's corporate tax regime. The ABI gave its members a red top warning on WPP, saying they should look closely at the 'unique' structure of the scheme, before deciding whether to approve it.

The boss of rail infrastructure company Network Rail (NR) said he would not be taking any bonus this year. Last year, ceo Iain Coucher received more than £500,000 in bonuses, including a £305,000 annual bonus, after NR met certain performance targets. Other directors of the not-for-dividend company were awarded large bonuses despite NR being fined a record £14m for three serious engineering overruns over the 07-08 Christmas and New-Year period. Transport union TSSA is among organisations urging the company's bosses to show restraint, however, NR is preparing to defy ministers by awarding bonuses to other directors, despite criticism of its performance and public anger over executive pay in general. NR made the case for payouts in a letter sent to trade union officials and train companies. The government funds the company but is powerless to prevent any executive windfall.

Staff at the **Financial Services Authority**, who presided over the near failure of the banking system late last year, were last month awarded bonuses of almost £20m, a 40 percent increase on the previous year. The FSA was among banking regulators who identified Northern Rock as the weak link in the banking system in 2004, three years before its collapse. Despite this, one FSA official was paid an award of £90,000 in April and ten staff received bonuses of £50,000 or more, figures obtained under the Freedom of Information Act show. The 2,500 staff at the City watchdog were on average paid bonuses of nearly £8,000 in April and 174 of them earn six figure basic salaries. Don Foster, the Liberal Democrat MP who obtained the figures, said: "Given the crisis we have seen in the financial services industry, I find it utterly bizarre that the FSA is actually paying bonuses to anyone this year. Bonuses should only be paid when someone has performed beyond the call of duty. Many people are concerned that the FSA has failed to perform the basic functions it should have done. Regulators must now follow the lead of many in the public sector who have promised to freeze executive pay," he added

The FSA, which is cracking down on bonus payments in the banks, defended its own bonus awards, saying it had about 250 extra staff in 2008 compared with 2007, and that it had to pay more to attract and retain the highly-qualified people needed to improve regulation in the wake of the financial crisis: "To suggest that we should cut this element of the FSA's total remuneration when we are being urged to upgrade our skills base makes no sense," the regulator said. The FSA said previously it would increase bonus payments to up to 15 percent of staff costs, from 12 percent in 2007.

The Treasury select committee attacked the FSA for its impotence over last year's Icelandic bank collapse and its "complacency" regarding executive pay in the Square Mile. The MPs said the FSA was guilty of a "systematic failure of duty" over its regulation of Northern Rock, which had to be nationalised early last year.

With the angels: Both former HBOS ceo Andy Hornby and ex-chairman Lord Stevenson waived their pay offs and Hornby left with no more than his statutory minimum of £2,970 - (no zeroes missing there) Peter Cummings, who headed up the corporate banking side of HBOS, waived a contractual bonus of £1.32m. The president and founder of French firm Fimalac, Marc de Lacharriere, announced that he was giving his entire bonus of €uros 780,000 to a charity which diffuses arts to young people in 'difficult' city areas.

Campaign for change:

• Investor groups are calling for company directors in charge of pay policy to stand for re-election every year, as the City steps up its campaign to improve boardroom practice on remuneration. The Co-operative Asset Management, an ethically minded investment group, said that chairmen of remuneration committees in all listed companies should put their jobs to an annual shareholder vote. Abigail Herron, corporate governance analyst with the Co-op, said: "It would enable shareholders to hold the chairmen of remuneration committees to account, rather than have to wait three years until they come up for re-election." It is believed that the ABI, whose members control more than 15 per cent of the stock market, is considering making a similar call as part of its efforts to make companies more transparent and accountable on pay. The ABI may recommend the annual re-election of committee chiefs as a 'gold standard' for listed companies.

• The US Securities and Exchange Commission agreed to allow shareholders to nominate company directors. The SEC said it had proposed the rule because the economic crisis called into question whether boards were exercising enough oversight. Analysts said that publicity about generous pay and the need for taxpayer-funded bailouts had changed the mood. The rule will allow large shareholders such as pension funds to nominate up to a quarter of a company's board members.

• Calls for a new Glass-Steagall firewall between high street banks and investment banks - to prevent another sub-prime disaster - are gaining support on both sides of the Atlantic, including former Fed chairman Paul Volcker. Ex-President Clinton's decision to repeal Glass-Steagall in the 1990s is now seen by many to have opened the gates of hell.

Clawback clauses on executive pay are taking hold across the corporate world, with electrical components company Premier Farnell the latest to introduce the restrictions. BT and security company G4S have both recently added clawback provisions to their remuneration schemes. The clauses allow companies to reclaim bonuses paid out on profit target achievements, which later prove illusory or damaging to the company's longer-term future. Premier Farnell's shareholders sought the clawback clause before they gave approval to a new short-term incentive plan for executives. The company wanted some bonuses to be based on six-month operating profit targets rather than an annual one, because of "limited visibility" on earnings. Ceo Harriet Green's pay was 41 percent lower, at £555,000 last year. She still received a £60,000 bonus and 16 percent rise in basic salary despite the tough times faced by the company, whose pre-tax profits fell 36percent in the three months to February.

We're alright Jack: 2008 wasn't too painful for a typical ceo of a FTSE 100 company, according to a survey by Manifest, the governance service that advises big investors. It calculates that the median total remuneration for a FTSE 100 ceo rose seven percent last year to £2.6m, even though the value of FTSE 100 companies fell just under 30 percent during the same period. Most FTSE bosses profited handsomely from the unsustainable economic bubble created by the dubious lending of some bankers. The cash bonus paid to the typical ceo was unchanged at £514,000 last year. Average pay rose a bit less, by two percent, to a whisker under £4m. As for the longer-term trend, the average remuneration of FTSE 100 ceo increased 295 percent over the past decade, compared with a rise of just 44 percent for employees. However, the FTSE 100 index stood at 5,896 on 31 December 1998 and it was 4,562 ten years later - a fall of 23 percent. A large number of companies are putting in place new incentive schemes now, when share prices and profits are at a cyclical low - which could mean that remuneration will be ratcheted up again soon.

Trough talk: The Labour-controlled Treasury Parliamentary Committee said that the payment of big bonuses to top banking executives should not be prohibited altogether - not even in the big banks, RBS and Lloyds, where taxpayers have huge stakes. The MPs said that there was a strong case for curbing or stopping bonus payments for staff on higher salaries at Lloyds and RBS, but they concluded that would not be a good idea because "unduly strict restrictions on bonuses to such staff would result in the banks struggling to recruit and retain talented staff" - which would be to the detriment of the taxpayer as a major shareholder in both institutions. The MPs want a ban on bonuses being paid to bankers until it's clear that the profits generated by those bankers are real and sustainable - which was not the case with many of the notionally colossal profits generated in 2006 and 2007 from trading in toxic investments, such as collateralised debt obligations. They urged thorough reform of the governance system that sets bankers' pay, urging more involvement of staff and shareholders in setting remuneration for top bankers and much more transparency about what bankers are paid (so publication not just of the remuneration of those on boards but also of senior bankers below board level).

Oz ministers re-think Eso tax rise plan

Business organisations welcomed the Australian Government's apparent back down on its controversial Budget plans to severely reduce tax concessions for employee share schemes. Assistant Treasurer Chris

Bowen said the Government was "taking on board some of the concerns" about its proposed changes, which have prompted many companies to put their employee share schemes on hold. The changes would mean those earning more than A$60,000 would be taxed upfront automatically on employee share awards, instead of retaining the power EITHER to defer tax payment until vesting or exercise of rights OR elect for a A$1000 tax exemption with upfront tax payment on the balance above the limit.
Ministers ordered a review of Eso tax arrangements after a storm of criticism from both employers and trade unions broke over their heads. Mr Bowen said the Government would examine the most efficient way of protecting the tax base and reducing potential avoidance and confusion, while maintaining support for Eso schemes for low and middle-income workers.

Graham Rowlands-Hempel of PwC said that if the changes proposed in the Budget were enacted, all shares, options and restricted stock units (RSUs) provided under an employee share plan would be taxed on award. Details were still awaited but the proposed approach differed significantly from current arrangements, whereby employees who acquire options or RSUs under most share plans (‘qualifying rights’) can elect to pay tax on award or at the time of exercise, or vesting in the case of an RSU. Options or awards under non-qualifying arrangements are already taxed upfront. “Though it is not clear, we understand that the tax would be calculated on the value of the option or RSU on grant. It is also not clear if the tax paid would be refunded if the option or RSU lapsed. If enacted, the new rules would apply to awards made on or after 12 May 2009, though it remains to be seen whether they will pass through Parliament, especially as the Government does not control the Senate,” added Rowlands-Hempel. In Oz, Freehills partner Quentin Digby told Newspad that Oz share schemes activity would grind to a halt if the new government’s plans were enacted. The proposals were seen as ironic given the current push towards performance-based equity for executives and the fact that the concessionary regime for taxing employee shares and rights was introduced by the Keating Labour Government in 1995. The Oz Government considers these incentives to be a form of remuneration, which should therefore be taxed accordingly - that is, in the year of receipt, as is the case with salary and wages. These proposed changes represent a fundamental shift in the law and will impact the tax effectiveness of many equity incentive plans. The amendments would put Australia considerably out of step with the rest of the world, a fact that would be raised as the draft legislation is debated, said Minter Ellison.

Using employee equity in tax defence

How can companies potentially maximize tax efficiency for existing long-term share/incentive awards in light of the Chancellor's proposed new income tax rate of 50 percent for income over £150,000 (as from 6 April 2010)? asks Clifford Chance in Employee Benefits News. A U-turn by the Chancellor seems unlikely and the Opposition is not committed to a reversal of the 50 percent tax rate if it comes into force. Companies should review the structure of their long-term incentives now, so that they will be in a position to implement any new arrangements once the landscape for the 2010/11tax year becomes clearer.

Any proposed new share/incentive plans will be considered by company remuneration committees (and, if shareholder approval is needed, by shareholders also) against a backdrop of continued economic turmoil and increasing scrutiny of executive remuneration. The Budget reductions in tax relief for approved pension contributions are very significant and may mean that the remuneration committee and shareholders will be more sympathetic to the idea of trying to make share plans more tax-efficient. So what choices exist for companies?

• By restructuring an LTIP so that it includes a tax-approved CSOP option grant element, companies can offer executives a way of reducing their overall tax bill without reducing the value that is delivered. Assuming the share price increases, the executive could in due course be given a cash payment to exercise the CSOP option. The advantage of this arrangement is that the growth in value of the CSOP shares should be subject to capital gains tax (CGT) at 18 percent rather than income tax at 50 percent.

• Many companies have set up EBTs to supply shares for their share plans. Some companies have set up EBTs to provide other benefits in a tax-efficient manner. Clifford Chance is looking at ways in which the latter use of an EBT could be extended to share plans so as to improve the tax treatment of a company’s existing share plans.

• The structure of a joint ownership plan is intended to replicate the economic benefits of a share option but with a more beneficial tax treatment, i.e. the executive only benefits from the future growth in the value of the shares whilst achieving CGT treatment for that growth in value. It should also be possible to replicate a LTIP award with this type of arrangement.

• Under “hurdle” share arrangements, executives acquire shares with fairly minimal rights (e.g. as to voting and/or dividends) and such shares only participate in the future value of the company above a prescribed value hurdle. The objective of hurdle shares is similar to that of joint ownership arrangements.

• Although the annual/individual limits are relatively low, many companies will now place greater emphasis on (maximum) participation in tax-approved Sharesave and Share Incentive Plans in order to take advantage of the tax benefits.

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