Vol 36 No 6 March 2020

it's our business

newspad of the Employee Share Ownership Centre

EXCLUSIVE: Tax & interest may leave Roadchef Esop beneficiaries penniless

Tax, interest and penalties which HMRC plans to levy on the long-suffering Roadchef Esop beneficiaries could wipe out their compensation pots entirely and leave them with nothing, their EBT trustee warned.

For lengthy talks between the Roadchef motorway services stations EBT trustee and HMRC over the taxable status of an estimated 350 former Esop participants have collapsed, because HMRC is determined to tax and fine them.

Yet they are blameless because their Esop shares were sold without their advance knowledge 21 years ago to a Japanese company by former Roadchef chairman and ceo, Tim Ingram Hill. As a result, the tax exempt conditions attached to the Esop were broken, rendering the share gains liable to taxation.

The bitter truth emerged in an angry letter from the trustee, Christopher Winston Smith, director, of Roadchef (Employee Benefit Trustees), who urged the Esop beneficiaries to support his call for an urgent change in the law to protect Esop beneficiaries who have been victims of either breach of trust or fraud on the trust.

He warned HMRC that he would not accept defeat and would take the case back to the High Court, on behalf of the Esop beneficiaries, despite the cost and the additional delay.

However, the news left the beneficiaries bitter and stunned. One told *newspad*: "*This letter is utter rubbish – We are no further forward and this is very disturbing news after this length of time.*" Another said: "*We were robbed 20 years ago and now the same thing is happening again.*"

It took the mainly low-paid ex motorway service stations staff well over a decade to mount a High Court action for compensation because they could not afford the fees. Finally, after a change in the law on case funding, their legal adviser, Capital Law, found a litigation funding company prepared to take on the case – for a substantial fee. So it was that in **January 2014**, Mrs Justice Proudman ruled in the High Court that transfer of the Esop shares from one EBT to another by Mr Ingram Hill, prior to selling them, was void and that the former Roadchef Esop participants and others should be compensated by him.

However, six years on, still not a penny of compensation has been paid to the long-suffering beneficiaries in a case condemned by Esop Centre chairman, **Malcolm Hurlston CBE,** as a modern version of the fictional *Jarndyce v Jarndyce*, in Charles Dickens' novel *Bleak House,* a case which has gone on so long that almost no-one can remember what it was about and the legal costs have eaten up the entire value of the estate anyway.

Mr Winston Smith told beneficiaries: "We met HMRC's officers on January 4 but it turned out to be a waste of time. Despite the robust advice we continue to receive from our legal team that no tax is due or payable by either the Trust or its beneficiaries on the receipt or distribution of

From the chairman

I was struck by the news last week that more than a million workers are now on zero hours contracts. They join the increasing proportion of the workforce which is beyond the reach of our last century share schemes.

We must find imaginative ways of including them, such as a weekly free sweep with options or shares as a prize. A similar approach has proved effective in the US and skilled companies can make the comms work so more employees are unified under the share price.

Fred Hackworth reveals on this page that HMRC is playing hard ball with the Roadchef beneficiaries whose plight is a sign of many things wrong with our existing system. It is right that HMRC should defend the taxpayer, but I still hope there is a subplot: that Jesse Norman will cut the Gordian knot and HMRC is working sub rosa on how to contain any fall out.

Malcolm Hurlston CBE

monies recovered by the Trust, HMRC still appears to be considering all of the possible taxes, interest and penalties to charge. "HMRC officers continue to approach this from the perspective that "tax must be paid somewhere" rather than whether it is legally due and payable.

"***If they get their way, the resultant tax and interest could wipe out the entire assets of the Trust*. *This what we are up against. This is what we're fighting to stop***."

He added: "It is likely that we will be forced to go to court to resolve the tax issues but that will take time and further expense. HMRC should not be putting us to this expense but we can't give up either."

The EBT trustee said that potentially a quicker and cheaper way to resolve this was in the form of amendments to existing tax legislation to: include the original Trust within the list of all-employee share ownership schemes which already benefit from tax breaks; and protect **all** employee share schemes from losing those tax breaks in circumstances where Esop beneficiaries fall victim to a breach of trust or fraud on the trust that feeds the employee share scheme.

Mr Winston Smith explained that the Esop trust set up for Roadchef employees by the late Mr Patrick Gee was the first of its kind and set the precedent for the modern all-employee schemes which have evolved today.

"It was designed to reward and incentivise hard-working and loyal employees of Roadchef by giving them the opportunity to share in the ownership of the business and receive tax breaks in the process. It was heralded with support from the then government, HMRC and the trade unions.

"Had Roadchef's former ceo, Mr Ingram Hill, not stripped the Trust of its shares (which were earmarked for its beneficiaries), it would have continued as a tax efficient employee share ownership scheme and would undoubtedly have evolved into what is covered by the legislation of today.

"The Trust and its beneficiaries (and others like them) shouldn't lose their tax-breaks solely because the Trust was laid bare by a breach of trust. Further, the Trust and its beneficiaries shouldn't lose their tax-breaks in circumstances when they manage to recover what was rightfully theirs.

"Taxing you in these circumstances would make you victims twice over.

"When parliament sanctioned tax-breaks for all-employee share schemes, it surely could not have been its intention to penalise beneficiaries who fall victim to a breach of trust or fraud. We are not seeking to change the law to avoid paying tax. This is about protecting the essence of what these schemes were all about - ensuring tax breaks for those who deserve it and who would have benefited but for Ingram Hill's actions. It's the right thing to do."

Neil Gray, the SNP MP, had been a strong supporter of their struggle for several years and asked Boris Johnson for help at Prime Minister's Questions. This resulted in a meeting with the financial secretary to the Treasury, the Rt Hon Jesse Norman, on February 5, which Mr Winston Smith was invited to attend.

"*The Minister was sympathetic to our cause and I very much hope that he will press HMRC to do the right thing and allow REBTL to distribute the money to you our long-suffering beneficiaries, without any tax implication,"* The trustee added.

A second High Court hearing would take at least a year to settle, even though it would be fought on the much narrower ground of the tax liability, if any, of the Roadchef beneficiaries. The trustee and other legal advisers would have to prepare their case; seek a listing date for a hearing, then fight it out in court – assuming HMRC, on behalf of taxpayers generally, continued to insist on tax deductions and penalties being levied – and then wait for the judge's ruling.

Furthermore, the additional legal costs would be substantial, as the trustee has warned. Although no-one involved in the case will confirm the costs to date, it is fair to assume that the beneficiaries already face a bill of at least **£6m**. A large slice of that is the payment the beneficiaries had to make, through Capital Law, to get the required funding to mount the High Court case.

An incensed Roadchef Esop beneficiary told newspad: "*We received a letter today and alas it is utterly rubbish. They are no further forward. It states that HMRC has not made a decision on the tax and will probably not (in the near future) and that the trustees might need to take it to court. The trustee now wants us to chase it in parliament in order to change the laws etc*." This beneficiary added: "*We have never been asked what we wanted when they started this trip of pursuing extra money, so this is very disturbing news after this length of time."*

Another beneficiary told *newspad* that it was time to throw in the towel and accept whatever pittance remains after HMRC has taken its bite: "*Something is better than nothing as I don't see any end to this,"* said the former Roadchef employee. *"They are using all the compensation awarded to us in 2014 to fight a losing battle. We where robbed 20 years ago and the same thing is happening again. They won't lose anything - they will get their millions in legal fees and the longer it goes on, the more fees and less for us."*

Consumer goods giant wins top Centre share plan award

Health and hygiene consumer goods giant **Reckitt Benckiser** scooped the main prize in the *Newspad* Employee Share Plan Awards for the 2019 calendar year. It won the accolade in the **Best international all-employee share plan** category in UK based multinational companies employing more than 2,500 people, with share plans in at least three countries. The entry rules point out that *an all-employee share plan can be a particularly effective way for a multinational company to bring together a diverse global workforce to help achieve key corporate goals*. Submissions were judged on how successfully the share plans entered met each company's objectives in light of the complexities of cross-border arrangements.

The judges said of Reckitt Benckiser's entry: "*RB operates in 60 countries and runs share plans in 57of them. We liked the kiosks which are made available to employees who cannot access the internet. The spread of its share plan is commendable. There is a high percentage of take up and plans are tailored to each country. The company has introduced share plans in some countries known to be difficult to reach with Eso, for example Costa Rica and Pakistan.*"

Second in the main category was European multinational aerospace corporation, **Airbus,** the world's largest airliner manufacturer. Its entry was ***Highly Commended*** by the judges, led by Centre chairman **Malcolm Hurlston CBE**. Of this entry they said: "*Airbus clearly tried to reach all eligible employees, as there are a huge number of people in this plan. The company gives them a lot of choice (five different plan packages they could choose between). Employees in the UK can switch to another version of the plan if they want to, which is an unusual offer. The level of plan flexibility is very good.*" Airbus, which has 13,500 UK employees, faced significant challenges (including Brexit), they added.

Imperial Brands, formerly Imperial Tobacco Group, the Bristol based multinational, was a finalist in the main Awards category. The judges noted that the Imperial Brands share plan entry displayed "good communications" strategy. This entrant had shifted its plan administration and put everything in the hands of Centre member **Equiniti,** removing an internal team. Equiniti has contacted all the local coordinators in order to spice up the visibility and reach of the employee share plan. The judges concluded: "*Imperial Brand's entry shows that it is a highly competent international share plan, but not extraordinary (for example it only offers share plans in 23 countries, though it operates in 50). It is a solid and commendable plan.*"

GetLink, formerly **Groupe Eurotunnel**, a Paris based European public company which manages and operates the Channel Tunnel, was the fourth finalist in this category. The judges said that its employee share ownership plan had made good use of communications to engage its employees. However, though it is clearly not a UK only based share plan and GetLink has more than 2500 employees, so, in essence qualifying it for this category, it was judged that its Eso plan was *bi-national*, rather than *international*. Although GetLink's share plan displayed some positive features, this submission was judged as being not as engaging as other finalists in this category.

☆ The judges awarded stars to three entrants: Reckitt Benckiser, Airbus and Imperial Brands.

There were four finalists too in the **Best share plan communications** category: **Derwent London**; **easyJet**; **Mitie** and **Tesco.** *Communication is crucial to the success or failure of an all-employee share scheme. This award category highlights the* *need for communications programmes that are sensitive to the circumstances of an individual company and the make up of its workforce.*

The judges said that though there was a high take up of the **Derwent London** plan, only around 100 staff are involved: "*The company has a loyal low turnover workforce. Although 71 percent of employees signed up to the plan within two weeks of invitation, this represented only 72 people, almost all of whom were likely to be quite highly paid. Its share plans were organised and administered by Derwent London's company secretariat. Presentation of its communications documents was of a good standard and very clear.* However, the judges suspected that the company had a relatively easy time explaining its share plan details to just 100 employees, most of whom were assumed to be fairly financially sophisticated."

easyJet's entry in this category was judged more than satisfactory – excellent in fact. This plan participation rate was an impressive 55 percent from its overall payroll of 14,000. Keeping in regular contact with employees in the eight countries in which this plan was launched was not easy as many – pilots and cabin crew, for example – are often on the move. The judges said they were in favour of keeping such employee equity plans simple, which easyJet had done: "*The information is easy to digest. EasyJet believes in 'talking Urdu to Urdu speakers',"* they said. EasyJet is a believer in Eso and only ten percent of its workforce is **not** in one type of employee share plan or another. The judges praised the fact that easyJet had given actual examples of what its employees say about their share plans because not every comment had been favourable. In the same vein newspad reports judges' unfavourable views too so readers understand how they differentiate.

The third finalist in this category was outsourced facilities management company **Mitie,** which employs more than 48,900 people across the UK. The judges said that its submission was "impressive" because it had a lot of staff on comparatively low wages. They liked the real life stories in the entry – staff making small sacrifices in order to take part in the SAYE share option scheme, in which employee savings are risk free. It is vital that this key element is communicated" the judges said. However, there was nothing outstanding about the plan's communications, even though they were "*good*." The judges suspected that very few extra employees had joined the SAYE as a result of Mitie's communications campaign and asked the company to clarify the numbers. Mitie did so, confirming that four percent of its employees were contributors to the SAYE scheme, "*In 2018 there were 1,331 UK participants and 19 Irish participants and 2019 we had 1,844 UK participants and 10 Irish participants,"* said a Mitie spokesperson. *"For the UK, we therefore had 513 more people in 2019 participate than in 2018. This was a 38.5 percent increase in the number of employees participating. There are currently 2919 active participants across all live SAYE schemes."* This confirmed that the company had exceeded its expected uplift of 10 percent on the four percent of staff already participating in the SAYE.

The final candidate (alphabetically) in this category was supermarket giant **Tesco.** Its entry had come about partly because some employees had asked the company to produce simplified communications to help popularise the all-employee share scheme. The judges said that if Tesco got things right and carried the workforce with it, its Eso scheme had the potential to be among the largest in the UK. (*At present, the Royal Mail SIP still tops the UK share plans premier league, with an estimated 120,000 participants).* One element in Tesco's share plan communications was the replacement of the original six page invitation booklet with a postcard containing a QR code giving a clear signpost to online tools and an activation code.

The communication package included an explanatory video, but had Tesco got things the wrong-way round? Judge Brian Basham certainly thought so: he said the video should have *started* with the company offer to employees to enable them to buy discounted shares, instead of explaining how to do this right at the end. Overall, 30,000 employees – one in ten of Tesco's employees - had signed up to the share scheme to date.

☆ The winner of this category was **easyJet** and **Tesco's** entry was ***Highly Commended***. That of **Mitie** was commended. All four finalists received *star awards for their entries.

There were three finalists in the **Best use of technology, AI or behavioural science in employee share plans** category. As the awards rubric points out: *Without effective technological solutions, all-employee Esops would be prohibitively expensive and time consuming for many companies. This category recognises innovative uses of technology to manage, communicate and administer share schemes in a fast changing world.*

First, in alphabetical order, was Anglo-Swedish multinational pharmaceutical and bio-pharma company, **AstraZeneca**. What impressed the judges most about this entry was the company's provision of an inbuilt facility for employee shareholders to vote during the agm. They were unaware of any other UK company which offered the same facility. It was judged that the technical advance applied to the company's EquatePlus platform to enable fractional grant and vesting so that value of reward could be realised in full and improved accessibility allowed the platform's mobile app was indeed a smart piece of technology.

Warrington based **Blue Prism,** which develops leading robotic process automation software as used in online grant letters and the like, was the second finalist in this category. The technology it promotes relates mainly to back office processes. The judges agreed that Blue Prism was offering an efficiency tool, but not an AI-enabled tool. Nevertheless, the entry displayed several positive features.

The third of the finalists in this category was **Marks & Spencer.** Its entry focussed on a Rights Issue where the company needed staff input to proceed with a joint venture which would enable the company to demonstrate its commitment to becoming a truly digital retailer and the technological solution was integral to achieving its objectives within a short time period. The judges praised this as being the right kind of topic for sophisticated communications between management and staff. They said that this was the first Rights Issue which had used on-line technology and was very impressive indeed.

☆ The winner in this category was **Marks & Spencer** and all three finalists were awarded *stars for their entries.

The sole finalist for the share plans **Best creative solution** category was **Dixons Carphone.** This category *was designed to recognise particularly creative solutions to difficult problems encountered in the design and administration of share schemes and managing key events, including employee cultural, jurisdictional or social diversity issues.* This submission approached the category from a creativity in plan design angle. The judges liked the plan and were impressed that the eligibility criteria included *all permanent staff below senior management level with 12 months' service* and that the plan was startlingly simple. A point of interest too was ceo Alex Baldock's input and comments.

The entry is detailed and well thought out, but the judges were concerned that it may not truly answer the brief as a 'creative solution' as there was no emphasis on the use of creative tools. However, it was agreed that the company had been creative in the simplicity of the plan.

☆ **Dixons Carphone**'s plan was therefore judged to be a worthy winner in this category**.**

There was a lone finalist too in the **Best employee share plan practitioner** category, the **Rm2 Partnership.** *This year, for the first time, newspad is honouring the share plan professionals behind successful all-employee plans. This award will give us an insight into the plan objectives and criteria used in assessing the degree of success of the plans. Entrants will need to submit at least two examples of client all-employee share plan work to qualify for this award.* The judges said of this entry: "*Rm2's approach can be controversial. It is an employee owned company itself. The entry is well presented and the judges are happy to give the award on the basis of Rm2's dedication to employee share ownership and for the quality of its client references.*"

☆ The winner in the final category is **Rm2 Partnership.**

The newspad Star Award winning companies may choose to receive framed certificates in a short ceremony held during the symposium drinks reception, courtesy of Linklaters, after the afternoon presentations on March 26.

newspad

EVENTS

Ocorian co-sponsors Centre symposium

Ocorian, which has completed its merger with **Estera**, creating the world's seventh largest fiduciary business, has become the lead co-sponsor of our **fourth British Isles share plans symposium**, which takes place at global legal group **Linklaters,** London EC2, on **Thursday March 26.**

More than **50** people have already registered for this event. Alderman Professor **Michael Mainelli**, executive chairman of the commercial think-tank **Z/Yen Group**, will deliver the keynote speech. He is a qualified accountant, securities professional, computer specialist and management consultant, educated at Harvard.

Share plan sponsor companies are staking their claim to ***free seats*** offered by the Centre to issuers for this event. These include **AstraZenica**, **Blue Prism Group**, **Burberry, Landsec, Reckitt Benckiser, SGI Industries** and **Thales UK**.

Member advisers should get their skates on and register for this event asap, especially since they need to know their way through the corporate governance thickets as well as the post Brexit scenarios for share plans.

Willis Towers Watson director **Damian Carnell**, executive compensation expert and adviser to the **International Accounting Standards Board,** joined the speaker line-up for this all-day event. Damian will speak in the *Executive Reward* segment of the programme on: *Top pay, incentives and the pressing environmental, social and corporate governance (ESG) agenda.*

A major employee share plan case study, promoted by Centre member plan administrator **Computershare** will be another highlight. This slot will be introduced by experienced Centre conference speaker **Stuart Bailey.**

Claire Prentice, of **Travers Smith's** incentives & remuneration team, will examine: *Which elements contribute most to effective global equity plans.*

The symposium is being co-sponsored and hosted by **Linklaters**, whose speaker will be **Harry Meek.** His theme will be: *The changing landscape of investor and corporate governance expectations* regarding executive equity reward. Harry will focus on: regulatory developments impacting reward in the financial services sector; challenges to the way banks and FS firms have been operating incentive arrangements; finally, what listed companies can learn from the challenges and developments faced by the FS sector in share plan design and operation.

The event will be chaired and introduced by Centre founder, **Malcolm Hurlston CBE**. He will ask delegates: *How could all-employee share plan schemes be re-set to make them more popular with companies and employees?* Other speakers at the symposium include:

Colin Kendon, partner (employee incentives) at **Bird & Bird,** will discuss the government's review into the future of the Entrepreneurs Relief scheme which helps SME owners reduce their Capital Gains Tax bills when selling their businesses. Colin will deliver a frank assessment of the popular **Executive Management Incentive (EMI)** share options based scheme, which is being operated by more than 10,000 UK SMEs. During his tour of the 'ins and outs' of the HMRC tax-approved scheme, Colin will talk anecdotally about the use of 'Exit Only' EMIs.

David Craddock, who heads the eponymous worldwide share schemes consultancy, will explain how SME companies are valued, so that employee shares can be issued. David now represents the Centre on the *Worked Examples Group,* co-founded by the Centre.

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

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

Garry Karch of **Doyle Clayton** will explain *how Employee Ownership Trusts are structured and financed.*

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.* **Robin Hartley,** a senior associate of **RM2,** will discuss how best to structure and install *growth shares* in companies.

Practitioner Centre member delegates will pay **£395,** and trustee members will pay **£330** for their seats. Non-member practitioner delegates will pay **£595** (all ticket prices are VATable). Plan issuer (non adviser) delegates attend ***free of charge***.

The programme brochure can be downloaded from the symposium event page on the Centre website at**:**www.esopcentre.com/events/

Centre-STEP Jersey share schemes seminar

The next Esop Centre *share schemes for trustees* half-day conference, held in association with the **Society of Trust & Estate Practitioners,** will be in the *Pomme D'Or Hotel*, St Helier, on Friday June 12. As the tidal wave of corporate governance reform and regulation shows no signs of abating, EBT trustees who deal with employee equity, including executive incentives, should take advantage of the briefings given by member experts. Prices: Centre or STEP members: £375 and non-members: £480. Book and pay before May

OCORIAN

1 2020 and you may claim an early-bird discount of 50 percent off a third delegate ticket or 10 percent off the total (Only one early bird offer can be used for each organisation, whichever gives you the larger discount). To reserve your place contact the Centre at esop@esopcentre.com or call the team on +44 (0)20 7562 0586.

MOVERS AND SHAKERS

Ocorian/Estera merger completed

Two long term Centre members, **Ocorian** and **Estera**, have combined to create a global leader in corporate and fiduciary services, with expertise in employee benefit trusts and share plan administration. The enlarged business, with over 1,250 employees, is operating under the **Ocorian** name with refreshed branding. It offers a full suite of services across a network of 20 wholly-owned offices spanning the world's financial hubs. Ocorian is now the seventh largest corporate, funds and trust player in the world by revenue and has assets under administration of **$260bn**. It manages 17,000 structures on behalf of more than 8,000 clients who are financial institutions, large scale international organisations and high net worth individuals. Group director **Patrick Jones** said "We are delighted to announce our merger under the Ocorian brand. Both Estera and Ocorian share a common focus on building strong partnerships with our respective clients as evidenced by our long standing client relationships and in that regard are entirely complementary.

"Whether setting up an employee benefit trust, introducing a new plan or transferring existing arrangements, our approach is both pragmatic and collaborative and, above all, concentrates on the delivery of service excellence and added value. We see this as an exciting opportunity to further develop this important core component of the combined businesses." The merged business, now formalised after approval from the regulators, brings together the Estera and Ocorian trustee and share plan businesses. **Ocorian,** the corporate and fiduciary services provider, has its HQ in St Helier, Jersey, where it was founded in 1971 as *Bedell Trust*. **Estera**, created following a management buyout of the fiduciary group of *Appleby*, is a leading provider of fund administration, trust, accounting and other corporate services. Both are strongly represented in the Channel Islands and the Centre has worked with them – on employee benefit trusts and share plan administration - over many years. **Farah Ballands,** formerly ceo at Estera, is now ceo at Ocorian.

Behind the merged companies sits **Inflexion Private Equity,** which has acquired Estera, a leading global provider of funds, corporate and trust services from **Bridgepoint,** another private equity firm. Estera is now merged into Inflexion's existing portfolio company Ocorian, forming an organisation serving more than 8,000 clients from multiple jurisdictions, including Bermuda, Cayman, Guernsey, Ireland, Jersey, Luxembourg and Mauritius.

On the move

*Share plans industry doyen **Phil Ainsley,** managing director of **Equiniti**'s employment services group, is to retire at the end of this month. Phil has worked in the employee benefits and share plans sector for more than 20 years. A long-term Centre supporter, Phil is very committed to the further spread of employee equity and will be sorely missed.

***Sajid Javid MP** resigned as **chancellor of the exchequer** on February 12 and was replaced by **Rishi Sunak MP,** who had been Sajid's number two as **chief secretary to the Treasury**. Employee share ownership supporter **Jesse Norman MP** remains as **financial secretary to the Treasury**. He has oversight of UK tax matters, including the never-ending Roadchef Esop compensation tax battle. The new chief secretary to the Treasury is **Stephen Barclay MP,** previously secretary of state for exiting the European Union, reported Centre member **Deloitte.** Another minister with Esop involvement, especially in SMEs and corporate governance, was **Kelly Tolhurst MP**, under secretary of state at the department for **Business, Energy and Industrial Strategy (BEIS)** until February 13, when she was moved sideways to the **Department for Transport**, with the same rank. She was largely replaced at BEIS by **Paul Scully MP**.

*Centre member **Abbiss Cadres** has expanded its integrated tax team with senior addition **Doug Stratton**, joining the firm as a director. Doug spent more than 20 years as a personal tax adviser for individuals and employers at top-flight firms including **Deloitte** and most recently **MHA MacIntyre Hudson**.

*__Alexy Armitage__ has started a new job as global equity manager at **AVEVA Group.**

*__Emma Penn__ is now executive reward manager at **Marks & Spencer.**

UK CORNER

Budget Tremors

The shock resignation of Sajid Javid as chancellor left the Treasury anxious about the Budget, which will be delivered nonetheless by his successor **Rishi Sunak MP**, on the scheduled date of **March 11**. Mr Hurlston said: "*The departure of **Sajid Javid** from No.11 is a sad day for fans of employee share ownership. His previous tenure as business secretary and role in backing **Royal Mail** employees gave him unique standing. However he and Boris Johnson share most ideas and it is not necessarily bad news either for hopes of a Roadchef settlement or for our cause in general. His successor Rishi Sunak has a closer background to that of the PM and much wide respect, including cross-party. Of the junior jobs which affect us, I am glad to see Jesse Norman is still in post at the Treasury."*

In one of his last acts as chancellor, Mr Javid thanked Mr Hurlston for having written to him to highlight the Centre's Budget wish list. A Treasury official wrote: "*Thank you for your letter to the chancellor of the exchequer, which we are treating as a representation ahead of the Budget. The government is grateful to you for drawing their attention to the issues set out in your letter. While it would not be appropriate to respond in detail to the points you make at this stage, please be assured that the contents of your letter have been registered with HM Treasury."*

Centre member **Rm2 Partnership's** Budget *Wish List* included: *The continued growth of Employee Ownership Trusts (EOTs) with the level of transactions doubling again last year; *Double the investment limit on Company Share Option Plan (CSOP), the alternative discretionary share option plan to EMI. The CSOP £30,000 individual options award limit has remained unchanged for many years and is too low, compared to the £250,000 individual EMI options award limit. RM2 said: "*Too often we see companies excluded from the flexibility of EMI for what might be described as "minor trading infringements." The rules relating to the share capital of companies wishing to operate a CSOP are restrictive and can make it difficult for businesses with different share classes to use the scheme. Recognition that the holding period for the all employee Share Incentive Plan (SIP) – five years to achieve maximum tax advantages – is unrealistically long, particularly for younger employees. The five year rule puts off business owners more than anything else. What a waste of a fantastically flexible, tax efficient, equitable share plan*."

EOT is becoming a serious option for owner managers looking for answers to their succession questions. Professional service firms, in particular in the construction and architecture sectors, are embracing this alternative to partnership structures and even traditional law firms are taking a look, with *Doyle Clayton* making the transition to employee ownership. "We expect additional interest in the area of governance for EOT owned businesses that have got through the initial transition period and now look to develop new management approaches to reflect the fact that companies are now majority owned by their employees," added the Rm2 Partnership.

Capital Gains Tax (CGT) reform to drive greater investment in SMEs is on some commentators' wish list too. ''*What I'm proposing is that all investment in publicly listed companies up to a ceiling of, say, **£250m** market value at the time of purchase be made CGT free,* wrote Jeremy Warner in *The Telegraph.* "*There are compelling reasons for doing it, the most obvious being to attract investment away from bigger, established companies and into smaller, up-and-coming ones. It would revitalise public markets and resuscitate dying direct retail investment in them.* At just 20 percent on shares for higher-rate taxpayers it is not a particularly onerous tax. *But to remove it completely would be to risk more substantive damage to the tax base, as high earners sought to switch from highly taxed income to nil-taxed capital.* Beneath the apparent market buoyancy, the *number of publicly listed companies is plummeting,* and so, with massive levels of share buy-back activity, is the size of the capital base, with equity replaced by plentiful cheap debt. As companies merge into bigger concerns, or go bust, there is a growing absence of new listings to take their place."

*UK's institutional investors are considering the idea that companies should be set targets to increase **employee share ownership**, financing a study arguing the case for quotas and "name and shame" style league tables. The **Social Market Foundation** think tank urged the government to set a target for large listed companies. This could either be a percentage of share capital owned by staff or a percentage of the workforce owning shares. A target of ten percent of the company owned by staff *"might capture the public imagination,"* it said. The government should publish league tables that track companies' progress in meeting the target in order to encourage them, in the same way that targets have helped to nudge companies into appointing more women, added the Foundation. *Read the **Centre's** Budget representations in full in the February issue of newspad.*

Registering share plan awards

At this time of year, many clients are busy preparing their annual report, wrote Paul Mathews, ceo, ***EQ Boardroom***. "*Whilst we don't have a crystal ball of what the forthcoming proxy season will bring, we do expect some of the themes to be around regulatory impacts, executive compensation, ESG issues, and shareholder activists"* Gifts and awards of shares in companies, known as employment related securities (ERS) are commonly used by employers to reward, retain or provide incentives to employees. They can be tax advantaged or non-tax advantaged. *You must register new ERS schemes with HMRC, including one-off awards or gifts of shares. All new tax advantaged schemes should be registered by **July 6** following the tax year it was established.* Share Incentive Plans (SIP), Save as You Earn (SAYE) and Company Share Option Plans (CSOP) ***cannot*** be registered after July 6: You only need to register non-tax advantaged schemes when there's a reportable event, for example acquiring or disposing of securities, or assigning or releasing securities options.

Trustee Registration Service expanded

HMRC and HM Treasury published a consultation on expanding the Trust Registration Service to comply with the Fifth Anti-Money Laundering Directive**,** reported Centre member **Deloitte.** Among other changes, the Fifth Anti-Money Laundering Directive will require registration by all UK trusts, including those that do not have a UK tax liability, non-UK trusts which acquire UK land or property and non-UK trusts which enter into a new business relationship with certain defined persons, including many UK professional advisers. Access to information on the register is intended to be much broader than under the Fourth Directive. Key points for consultation include which 'trusts' should be within scope, and who can access information held on the register. The new rules will apply to trusts in existence on or after March 10 2020, although the updated register itself will not be in operation for some time. See https://deloi.tt/31dYMGM

Join the Esop Centre

The Centre offers many benefits to members, whose support and professional activities are essential to the development of broad-based employee share ownership plans. Members include listed and private companies, as well professional experts providing share plan services covering accountancy, administration, design, finance, law and trusteeship.

Membership benefits in full:

⇒ Attend our conferences, half-day training seminars, breakfast roundtable discussions and high table dinners. Members receive heavily discounted entry to all paid events and preferential access to free events.

⇒ Access an online directory of Esop administrators; consultants; lawyers; registrars; remuneration advisers; companies and trustees.

⇒ Interact with Esop practitioner experts and company share plan managers

⇒ Publicise your achievements to more than 1,000 readers of the Centre's monthly news publications.

⇒ Instant access to two monthly publications with exclusive news, insights, regulatory briefs and global Esop updates.

⇒ Hear the latest legal updates, regulatory briefs and market trends from expert speakers at Esop Centre events, at a discounted member rate.

⇒ Work with the Esop Centre on working groups, joint research or outreach projects

⇒ Access organisational and event sponsorship opportunities.

⇒ Participate in *newspad's* annual employee share ownership awards.

⇒ Discounted access to further training from the Esop Institute.

⇒ Add your voice to an organisation encouraging greater uptake of employee ownership within businesses; receive support when seeking legal/policy clarifications from government and meet representatives from think tanks, media, government, industry bodies and non-profits by attending Centre events.

How to join: contact the Centre at esop@esopcentre.com or call the team on +44 (0)20 7562 0586.

Profit shifting

Giovanni Ferrero, who heads Ferrero Rocher **-** the Italian chocolate empire that makes *Nutella* - is paying himself and his family a **£542m** dividend in one of Europe's biggest-ever paydays. The humongous annual dividend payment comes as the company paid just £110,000 tax in the UK last year, despite selling £419m worth of chocolates and other snacks in Britain. Ferrero, who is Italy's richest man with a £24bn fortune, has paid himself and his family more than €2bn in dividends over the past decade. Over the same period the company, which owns *TicTacs* and the UK's 109-year-old chocolate brand Thornton's, paid less than £500,000 in UK taxes. Tax experts have accused the company of structuring the business in a "complex manner" in order to pay as little tax as possible. Last year the UK business paid a £334m *cost of sales* charge to Ferrero's holding company in low-tax **Luxembourg**. That led to the company making a pre-tax profit of just £9.7m and so the firm paid a mere £110,000 in UK taxes. Ferrero UK said it had lost so much money in the UK over the years that it had stored up *unused tax losses of £22.5m available for offset against future profits.* Tax accountant Robert Leach scorned Ferraro's claim: "Ferrero Rocher appears to be shifting its profits overseas to reduce its UK tax liability. The company is shifting the profits to Luxembourg and shifting that to Monaco – where there are no taxes. The UK company accounts show that Ferrero has not broken even for many years. No parent company would keep a loss-making company going year after year; the fact that Ferrero Group is doing so is in effect an admission that it is exporting profits. Basically, this is chocolate and hazelnut wrapped in some fancy packaging – it should not cost much to make. So I would ask the company, **what is costing £334m?** I would ask Giovanni Ferrero, 'Why are you still selling chocolate in the UK, when you don't make a profit*?'"* Labour MP Rachel Reeves, chairwoman-elect of the Commons Business select committee, said the government must intervene to prevent companies such as Ferrero using "opaque tax arrangements" to hoodwink the taxpayer. "The rules for firms like Ferrero Rocher and everyone else are simple: tax should be paid where the revenue is earned," she said. "If the money is earned in the UK, the tax should be going to the Treasury to help fund public services like education and health on which these firms rely."

Tax Avoidance

The **Directive on Administrative Cooperation (DAC6)** was transposed by each EU member state into domestic laws by the end of last year, with the

WHITE & CASE

first reporting due on August 31 this year and the first quarterly exchange of information on October 30. The EU's **Economic and Financial Affairs Council** adopted a sixth amendment to DAC6, which requires so-called tax intermediaries to report, on a mandatory basis, cross-border arrangements that contain defined characteristics or features, possibly subject to a main benefit test, said *Taxand*. While DAC6 proposes a uniform mandatory disclosure rule framework, national implementation will result in a non-uniform set of rules, which calls for adequate co-ordination amongst involved intermediaries. *The UK will be implementing DAC6 despite Brexit*. HMRC reiterated that Brexit would not reduce the UK's resolve to tackle international tax avoidance and evasion. The International Tax Enforcement (Disclosable Arrangements) Regulations 2019 was published, which will come into force on July 1 this year. The chancellor has published a statutory instrument to legitimise the new regulations. The UK has had a disclosure regime for tax avoidance schemes (**DOTAS**) since 2004 which provides experience in analysing the respective hallmarks. For Category A hallmarks, HMRC stated that it intended to take a similar approach to interpretation as it does for DOTAS. The draft legislation set out penalties for failure to meet its requirements; failures to report will start at £600 per day, failure to notify an ARN up to £5,000 and would allow the **First Tier Tribunal** to impose penalties up to **£1m**.

Banks, accountants and law firms which facilitate offshore tax schemes this year have had to start collating their client records in order to meet the Brussels directive's requirements. *The toughest fall upon financial intermediaries who will have to disclose automatically any new cross-border tax schemes offered to clients.* Those designing and promoting aggressive avoidance structures will have ***five working days*** to file details with their local tax authority, under the scheme drawn up by the Commission. The clock begins ticking as soon as the scheme has become available to a client. Where there are several intermediaries in the chain, one will be made to take responsibility for disclosure. Where all intermediaries in the chain are based outside EU member states, the obligation to disclose will fall on the client. However, no-one is yet sure what happens to that obligation, were the UK to quit the EU without a deal. "The ultimate objective*", according to the EC, "*is to design a mechanism … that will dissuade intermediaries from designing and marketing such arrangements." The new rules are aimed at cross-border schemes that involve more than one country, so long as one is within the EU. However, there is the obligation to create a retrospective effect for any reportable cross-border arrangements of which the first step was implemented after entry into force of the Directive and before July 1. All EU member states will be obliged to share with each other, every three months, details of the tax schemes disclosed. A central directory of avoidance schemes will be created, to which all member states will have access. Research suggests that the majority of intermediaries are based in **Hong Kong,** the **UK** and the **US.** Almost 90 percent have an office, a subsidiary or an affiliate in Europe. The most active facilitators were the Swiss banks UBS and Credit Suisse, which were linked to 24,500 offshore entities between them. Trident Corporate Services, which was linked to 8,500 offshore entities, is the third largest and first in a string of middlemen whose names are largely unknown outside the world of offshore companies.

Loan Charge review:
policy paper, draft legislation, further guidance

In December 2019, the government announced a package of changes to the 2019 disguised remuneration loan charge in response to Sir Amyas Morse's independent review. It accepted the report's recommendation that the loan charge should apply only to outstanding loans made on, or after, December 9 2010, reported Centre member **Deloitte.** Thus, in many cases where a settlement has already been made, repayments of tax and NICs may be claimed. The package includes changes that will give taxpayers additional flexibility over the way they pay. See *Disguised remuneration: independent loan charge review* on www.gov.uk. HMRC published draft legislation to give effect to these changes, together with explanatory notes and a tax information and impact note. The draft legislation does not include the law supporting repayment of settlements already made to HMRC, which is expected to be released at a later date. The government intends to legislate for the changes in the Finance Bill, after the Budget. See https://deloi.tt/30MelVP. HMRC published further guidance for taxpayers on the changes, supplementing the guidance published on December 20 2019. See https://deloi.tt/3aDu7qE

TRAVERS SMITH

News for *newspad*

Please send your share schemes news to *newspad* for publication in the next monthly edition. Your news can be about a successful launch of a new employee share scheme; a piece of Eso research your employer has carried out; promotions and/or other personnel moves in the share schemes sector, or even about a technical Eso problem arising during the course of your work. Send your news items to *newspad* editor Fred Hackworth at: fred_hackworth@zyen.com

Corporate governance: non-exec directors

The UK's busiest director is on 14 public boards despite guidelines warning non-executive directors not to spread themselves too thinly, reported *The Telegraph*. Research by boardroom data firm BoardEx into those directors holding the most board positions – including at least one in the UK – showed that Christopher Mills, ceo of private equity firm Harwood Capital, held the highest number. These include roles at Ten Entertainment Group, the bowling alley operator; Aim-listed Augean, the waste business; Renalytix**,** the artificial intelligence developer, and Catalyst Media Group. The UK Corporate Governance Code recommends non-executive directors should have "sufficient time to meet their board responsibilities". Legal & General Investment Management, Britain's biggest fund manager, encourages non-executive directors to limit their positions to **five** public companies. In 2018, Mr Mills earned at least £126,000 from his non-executive directorships, according to the companies' annual reports. The Investment Association said: "*Directors need to be able to make sufficient time to obtain a good understanding of the company's business, as well as its strategic challenges and opportunities. This will help the board make the best decisions to deliver long-term value for the company and ultimately shareholders*." Mr Mills questioned the validity of the research, noting that some of the companies highlighted by BoardEx had been taken over. He said: "I do attend the board meetings but they're very short. These aren't nine-year jobs. [The companies] probably would have gone bust if I hadn't gone on the board. This is not sitting there and just ticking the boxes, this is actively being involved in the businesses to improve shareholder value." Other figures at the top of BoardEx's list included Anthony Nightingale, the retired md of Jardine Matheson, the Hong Kong-based conglomerate, who has non exec roles on 11 public boards. Adrian Li, a venture capitalist and Hong Kong national, is on six public boards, including FTSE 100 builder Berkeley, at whose 2018 agm, almost 31 percent of voting shareholders opposed Mr Li's election over concerns he held too many other directorships, but a spokesman for the company said the non-executive structure of some of the boards he served on in Asia was not comparable to British companies.

COMPANIES

Credit Suisse, which employs 5,500 people in London, froze its investment bank bonus pool for the second year running after a surge in trading revenue in 2019 was offset by a drop in its advisory and capital markets business. **Morgan Stanley** and **UBS** cut investment banker bonuses too in Asia after deals cooled. Meanwhile, the bank lost its ceo, Tidjane Thiam, who was forced to resign over a scandal about alleged spying on both senior executives and against the eco movement flagship, Greenpeace, too. He was paid a base salary of £2.6m and is being replaced by Thomas Gottstein, who previously ran its operations in Switzerland. Thiam left Credit Suisse with up to **£23.5m** in pay, bonuses and stock option vestings after unveiling a 69 percent rise in annual profits to £2.7bn. CS is applying a new claw-back to its cash bonuses – if employees leave within three years of receiving a cash bonus, they'll have to pay all or some of it back. CS is being harsh and is asking for gross amounts to be repaid. How will this sit with the EU's edict that senior staff in EU countries (including London, for now) must have at least ***40 percent*** of their bonuses deferred for at least three years? Morgan Stanley cut its Asia bonus pool after lower merger and acquisition fees, with overall investment banking revenue declining about 12 percent. The Asia bonus pool at UBS's investment-banking unit fell 14 percent for last year, while Morgan Stanley's is about nine percent lower. Goldman Sachs kept overall bonuses largely flat. Across the major banks, mds and executive directors faced the biggest bonus reductions - of between nine and 12 percent.

*Deutsche Bank's most senior executives *will* take home bonuses for 2019, abandoning a recent practice of waiving them during unprofitable years for Germany's biggest lender, reported the *FT*. Although the nine members of Deutsche's management board, including ceo Christian Sewing, agreed to forego about half of their variable pay for last year, they can still expect to receive between them about ***€13m (£11m)*** in bonuses. Deutsche reported a net loss of about €5bn, partly due to the cost of radical restructuring, including shedding 18,000 jobs. It is suspending its dividend for two years. Executives on the nine-member board will accept deeper cuts than other Deutsche Bank employees, who face a cut in their bonus pool of about 20 percent. During three consecutive loss-making years between 2015 and 2017, Deutsche's management board did not receive any variable compensation. Last year, when the bank made a net profit of €267m, its top executives collectively were awarded €25.8m in bonuses. Deutsche's deputy chairman Detlef Polaschek said shareholders had approved its executive pay plans by a large margin. As the lender met its cost-cutting target and other objectives for 2019, the management board would have been entitled to its full bonuses. *Despite this, members of the management board have decided on their own initiative to waive their individual variable compensation*, said Mr Polaschek.

*UK-based retailer Dixons Carphone has reviewed its own shareholder rebellion last September against its executive reward incentives. After that vote, the company said it had met many shareholders in an attempt to understand and explain the issues. To allay certain concerns about company performance, the ceo and cfo both deferred their cash bonus for the year by transferring it into share awards that will not vest for two years. Many shareholders had earlier expressed concerns about the level of bonuses to be paid for 2018/2019, in light of the company's lower business performance and recent fines. Share awards came under scrutiny. Some shareholders objected to ceo Alex Baldock getting almost 1.2m shares under a long-term incentive plan (LTIP). Baldock received 783,000 shares the year before. Dixons Carphone said at the time that the higher number of shares awarded was due to their lower share price. The company noted that ceo and cfo joined the business only in 2018 and that they had delivered financial targets for the fiscal year in line with the guidance issued in 2018. Dixons Carphone said it continued to believe its remuneration policy was "appropriate" to incentivise its new management team as the company embarked on a major transformation of its business.

*Ex HSBC ceo John Flint is in line for up to **£5.7m** worth of shares as a parting gift after being turfed out from his top job last summer, the bank revealed in its annual report. HSBC reported a loss of $3.9bn for the fourth quarter and a one-third fall in annual pre-tax profit to $13.3bn. Insiders said bonuses in global banking slid 16 percent. Analysts are predicting that between 10,000-15,000 HSBC jobs will go in the UK alone, many of them at the lender's Canary Wharf headquarters, nicknamed by some staff as the *Tower of Doom*. Noel Quinn, who became interim ceo last summer, is trying to improve performance in the face of ultra-low interest rates across Europe and tough competition on Wall Street.

*UK shopping centre landlord Intu wants to increase potential payouts for top executives, despite a plunge in its share price and a looming emergency fundraising, reported the *Financial Times*. The owner of Manchester's Trafford Centre had cut share-based rewards for the ceo and cfo for 2019 "*to take account of the current share price"*. However, it is now talking to shareholders about restoring these payments — which are separate from annual bonuses — to their previous, higher levels, an internal source revealed. Intu's share price has continued to fall as it struggles with about £4.7bn of debt and a crisis among bricks & mortar retailers. The discussions about the share awards are part of broader pay negotiations, which include ceo Matthew Roberts — who was previously cfo — voluntarily reducing the pension contribution he receives from 24 percent of salary to ten percent. That follows growing investor disquiet about executive pension cash contributions at listed companies. Potential rewards under Intu's performance share plan (PSP), a long-term incentive scheme, have traditionally been based on shares totalling 250 percent of each executive's salary, but were cut to 200 percent for 2019. *Intu is trying to restore this figure to 250 percent for 2020,* as first reported by the *Sunday Times*. After initial conversations with shareholders, Mr Roberts and the current cfo, Robert Allen, agreed to cap individual payouts under the scheme to **five times** their respective salaries, the source said. The latest salaries of Intu's top executives have not yet been disclosed, but in 2018 David Fischel, then ceo, was paid a salary of £615,000 and total reward of £943,000. Mr Roberts, then cfo, received £485,000 basic pay and total reward of £719,000.

*Centre member **Investec** confirmed that soon-to-be spun-off asset management business **Ninety One** will be listed in both London and Johannesburg. The asset management business will be rebranded when its demerger from parent Investec is concluded on March 13. Ninety One is seeking a listing for its public shares on London's main market with a secondary inward listing in Johannesburg. It is expected Ninety One will be eligible for inclusion in the FTSE UK and JSE SA indices and its shares will begin trading in London and Johannesburg on March 16. Following admission, Ninety One expects about 55 percent of its combined share capital will be held by Investec plc and Investec Ltd shareholders. Another 15 percent will be retained by Investec, with a further 20 percent to be held by Ninety One staff via an employee share ownership vehicle.

*Livery Dole is set to be acquired in an MBO that will formalise an employee share scheme at the Devon-based **Mitsubishi** Motor UK car dealer. Md Hayden Williams and sales manager Joe Chatting have teamed-up with company secretary Diane Slater and workshop controller Chris Veitch to buy out long-standing owner Nigel Clegg in the deal completing late last month. Clegg is set to retire from the business which was established back in 1923 and acquired by him in a first MBO 35 years ago. The new buy-out will formalise an employee share scheme that has been in place at the group – which achieved an *AM Best UK Dealerships To Work For* listing in 2018 – for the past four years. Williams, who has been at the group for 17 years and in his current post for the past five, said: "The current owner acquired the business in an MBO and he was keen to see it passed on in a similar way. It's a tough time to be sinking your life savings into a business, but from my point of view I know that what we are getting is a strong, profitable business at which 60 percent of custom is return trade and we're really optimistic about the future." Livery Dole's 24-strong workforce already gain a share of the business's profits on a quarterly basis, said Williams, but the new share scheme will see each receive a formal share of the business under its new management team and an additional share for each year they remain with the business. "*We have an amazing team where the average term of service is ten years and we wanted to take the opportunity to ensure that they all felt they had a personal investment in the business. The scheme mirrors those run by John Lewis and Waitrose,"* he added.

*The UK's hitherto best-paid banking ceo, António Horta-Osório, took a 28 percent cut from his previous £6.5m reward package as Lloyds Banking Group reported a sharp fall in profits last year. The group was hit by an additional £2.5bn bill for payment protection insurance, sending pre-tax profit for 2019 down by more than a quarter to £4.4bn, compared to £6bn a year earlier. Lloyds slashed the total reward package of its ceo to £4.7m and cut the group bonus pool for the first time in four years, with payouts down 33 percent to a total £310m. Horta-Osório is now the second-highest paid UK bank boss, behind Barclays' ceo, Jes Staley, who was paid £5.9m for 2019. UK regulators are launching an investigation about Staley's links with the sex offender and disgraced financier Jeffrey Epstein. Lloyds said the bonus cuts reflected results that were "heavily impacted by the additional PPI provision and other conduct-related issues." As part of the revamped pay policy, Lloyds will propose replacing its long-term incentive plan (LTIP) with a restricted shares scheme that pays out a set number of shares. Under these plans, executives typically give up the possibility of a bigger payout for the certainty of a smaller sum. Companies which move to restricted shares models are expected to slash the level of bonuses they pay out by at least 50 percent compared to the maximum that executives could have earned using the LTIP, according to guidelines from the Investment Association, the trade body for asset managers. LTIPs have come under fire for encouraging executives to think about short-term performance metrics, such as an earnings target for one year, rather than long-term growth. A benefit of restricted stock schemes is they do end up producing a lot of value for executives who create value for shareholders Under Lloyds' current LTIP, Mr Horta-Osório can earn up to *300 percent* of his £1.3m base salary extra, although he has received about two-thirds of his maximum in recent years. He was already expected to take a pay cut of about £220,000 in response to new guidelines on executive pension contributions. That move came months after Stuart Sinclair, chair of Lloyds' remuneration committee, faced a grilling by MPs over the bank's pay policies. Some asset managers are wary of restricted shares, believing bonuses should be subject to *performance conditions*. Others say that the removal of prescriptive performance targets should help ensure executives focus on the longer term and step away from managing the business to meet metrics such as an earnings target for one year. He added: "*Restricted share plans get more shares into executives' hands" for a longer timeframe, which helps align their interests with investors. A benefit of restricted stock schemes is they do end up producing a lot of value for executives who create value for shareholders."* Almost a third of Lloyds Bank employees say they are struggling financially, according to a trade union poll that highlighted the disparity between the bank's worst-paid staff and its ceo. Almost 50 percent said they feared losing their jobs. Lloyds is pushing ahead with a major reorganisation that has meant cutting more than 11,000 roles since 2018. Almost half said they were paid £25,000 or less on a full-time equivalent basis. The findings highlight the gap between some of Lloyds' worst-paid employees and Mr Horta-Osório, who was paid **237 times more** than staff in the bank's lowest pay quartile last year, according to Lloyds' latest annual report, which outlined the new remuneration *policy,* to be voted on at its agm. The bank said it had undertaken "extensive consultation with shareholders" to "ensure that our upcoming remuneration policy proposals are fair and informed by changes in best practice." Despite the controversy surrounding LTIPs, only a handful of UK companies have moved to a restricted share model, including engineering group Weir in 2018. In December, shareholders backed the introduction of a restricted share plan at Whitbread, the hospitality company, while Centre member telecoms group **BT** has been discussing this issue with shareholders.

***Marks & Spencer** is acquiring a new fd from sandwich maker Greencore with a golden hello worth up to £2.5m. Eoin Tonge will join the retailer in June and has vowed to help make M&S "*special again*." He will be compensated with up to **£2.5m** in M & S shares after giving up the right to Greencore stock which he was due under various bonus schemes. M&S is expected to decide how much to give him in late spring, taking into account financial targets. He will replace interim fd David Surdeau, who was drafted in two months ago following the sudden departure of Humphrey Singer after just 14 months in the role.

*Four top Ocado executives shared an £88m windfall after a bonus scheme pegged to the online grocer's share price paid out. Ceo Tim Steiner raked in **£54m** – one of the biggest payouts ever made by a listed UK company. The group's fd, Duncan Tatton-Brown, and coo, Mark Richardson, each banked £14m from the scheme. Luke Jensen, who runs its tech business, Ocado Solutions, got £6m. They were given the shares in 2014 under a five-year *growth incentive plan,* which measured Ocado's share price growth *relative* to the FTSE 100. Once Mr Steiner's salary and other bonuses are taken into account, his total reward for 2019 was **£58.7m**, compared to £4m in the previous year. The annual report revealed that Mr Steiner's total reward was **more than *2,600 times*** that of the median employee, who gets £22,500. Steiner's shares in the company are worth **£295m**. The top brass have been awarded a pay rise too for this year – Steiner's basic pay goes up £108,000, to £720,000 - to ensure they remain "motivated." Ocado's share price has rocketed over the past two years from about 250p in November 2017, to c. £12.50 after Steiner sold its grocery-picking expertise to seven foreign supermarket chains. Ocado is now worth £8.9bn, largely because of the success of Ocado Solutions, with the company being dubbed the ***Microsoft of retail.*** Ocado faced a revolt over pay at its 2019 agm, when a quarter of investors voted against the remuneration report. However, the remuneration committee decided not to change pay policies which were "*appropriate to incentivise and retain a highly entrepreneurial"* management team. Ocado reported a 2019 *loss* of £214.5m – up from a £44m loss in 2018 – which it blamed partly on last year's devastating warehouse fire in Andover, Hampshire. The loss reflected £94m of one-off charges, the bulk of which related to Andover, which is now being rebuilt.

*RBS is set to reward its bankers with collective bonuses of £305m – ten percent less than last year. The bonus pot at the state-backed bank is expected to be cut back from £335m in 2019 after a tough year. RBS, to be renamed NatWest Group later this year, was bailed out by the taxpayer in 2008 for £45 bn and is still 62 percent owned by the government, which plans to resume selling shares back to the market, almost certainly at a loss compared to what taxpayers were forced to pay for its shares. UK Shareholders Association has a wary eye on it.

*Hi-Fi entrepreneur Julian Richer sold 60 percent of his shares in the Richer Sounds electronics retailer he founded in 1978 to his 522 staff via an employee ownership trust (EOT) for £9.2m. He did not have to pay CGT on the sale owing to the exemption in the Finance Act 2014, which he later criticised as *ridiculously over-generous*. Of the initial £9.2m payment he received, he paid £3.9m back to staff in bonuses of £1,000 for each year of service. He claimed that what Richer Sounds saves in internal theft funds 70 percent of his employees to use one of his 12 holiday homes at least once a year, creating a cycle of happiness. Mr Richer has launched the *Good Business Charter* – an accreditation scheme he is funding to urge firms to treat staff, clients and the environment better. Baptised in 2006 at the age of 47, Richer speaks freely of his faith – he says he is motivated to do good "for Jesus" – so the charter comprises *ten commandments* to commit companies to improving their behaviour voluntarily. These include pledges on paying fair tax, diversity and inclusion, environmental responsibility, ethical sourcing and prompt payments to suppliers. One of the first to take redemption is Capita, the beleaguered outsourcing giant. To qualify, Capita has committed to paying its 63,000 employees at least the real living wage, as advised by the Living Wage Foundation, of £9.30 across the UK and £10.75 in London. About 100 other companies have registered. Mr Richer is personally bankrolling the project, which will cost at least six – possibly seven – figures in its first year for enforcement and administration.

*Sainsbury's boss Mike Coupe could receive a final payday of up to £4m - after announcing he will step down less than a year after his failed £7.3bn takeover deal with smaller rival Asda. He will be replaced in June by Simon Roberts, the head of retail and operations. Mr Coupe would receive £4m for his work at the grocer this year if certain targets are hit. However, given the 25 percent drop in Sainsbury's share price during the past year, it is probable that his reward will be lower. Mr Coupe has said he will give up his annual bonus and a long-term share award for the next financial year. His base salary is £981,543.

*The **Share Centre** is a takeover target of Interactive Investor in a proposed 62m deal. Investors who own stock in The Share Centre's parent company, Aim-listed Share plc, will be given a mix of cash and unlisted shares in Interactive if the deal goes ahead. The move has the full backing of Share Centre founder **Gavin Oldham**.

*Wealth manager St James's Place is to overhaul pay and perks, including axing benefits such as cruises and company cufflinks, as it attempts to reward *the right behaviour.* SJP is conducting a review into how its 4,271 partners, or advisers, are assessed, reviewed and incentivised, said the *FT*. Executives told employees that performance incentives will now not only focus on sales in individual years but will hinge on other metrics, such as charitable work and customer retention. Cliff-edge bonuses, triggered after partners or advisers hit a certain level of revenue to increase their income the following year, will be scrapped, they added. SJP, a FTSE 100 group with a market cap of about £6.2bn, which has previously been criticised over its incentive schemes, will stop overseas business trips, including annual cruises for those who performed best. The changes were unveiled at the company's agm. SJP told staff it had called in **Landor,** a brand consultancy that has worked with clients including **P&G** and **BA**, to help it polish its image.

*__Singapore Airlines__ boss Goh Choon Phong will take a pay cut of 15 percent as the aviation industry continues to struggle with the coronavirus outbreak. The airline announced that it was taking steps to reduce costs at "this difficult time". Senior management including the chief executive, executive vice presidents and senior vice presidents in the firm will all take a pay cut of between ten and 15 percent "to show solidarity with all management and staff".

*Global concessions & contracting giant **Vinci** paid its 100,000 French employees a special contribution of €400 each, enabling them to become group shareholders. Vinci is strengthening employee share ownership via the *group savings plan.* This involves paying each employee with at least three months' service an employer contribution through his or her account in the group savings plan, then using the funds to purchase units in a company mutual fund invested entirely in Vinci shares. Via this mechanism, made possible by the French *Pacte Law* (business growth and transformation), all group employees in France have become Vinci shareholders without having to invest any of their personal savings. This initiative mirrors the policy that Vinci has been rolling out over the past 25 years aimed at sharing the benefits of its success as widely as possible with its employees. The new contribution, amounting to €40m collectively, adds to the group's other initiatives aimed at sharing the benefits of its performance. In total, Vinci paid its employees in France more than **€400m** through incentive plans, profit-sharing plans and employer contributions in the group savings plan in 2019. Thanks to this special employer contribution, more than 20,000 employees became Vinci shareholders for the first time. In all, 165,000 current and former employees inside and outside France collectively own almost **nine percent** of Vinci's share capital, making them its biggest shareholder bloc.

*Almost a fifth of voting shareholders of **Virgin Money UK** bloodied the nose of the bank at its agm after it raised the pay of its ceo David Duffy by **88 percent** last year.

They opposed the bank's ***remuneration report***, a smaller proportion of objectors than last year but still one of the largest investor protests against a major bank in recent years. Joining the opposition to the board was shareholder advisory group **ISS,** which said the bank had paid excessive bonuses considering its recent poor financial performance. Nevertheless, Mr Duffy pocketed £3.4m, despite the share price being well below its 2018 peak. After a third of voters opposed the 2018 remuneration report, the group said it had listened and worked to ensure pay to board executives was *aligned with shareholder experience*. The group's pre-tax losses widened from £164m to £232m in the year to September as costs tied to the payment protection insurance scandal rose. It doesn't currently pay any dividend. Analysts pencilled in pre-tax profits for Virgin Money of £319m in 2020, but profitability is far from sure. The company said it had exercised "appropriate restraint" by reducing top executives' bonuses and freezing salaries. Duffy received a £445,000 bonus, against £620,000 last year. His total remuneration was inflated by a one-off £1.3m bonus linked to the demerger of **Yorkshire and Clydesdale** banks — which became Virgin Money — from National Australia Bank in 2015. The company paid him a pension cash contribution equivalent to a fifth of his salary when colleagues received only 13 percent. **HSBC, Barclays, RBS** and **Lloyds** are all cutting executive pension contributions following pressure from governance champions. Virgin Money chairman Jim Pettigrew announced his retirement next year, as Virgin's pay policy comes up for the triennial vote.

WORLD NEWSPAD

Stock buy-backs fall back

US companies purchased **$710bn** of their own shares of stock last year, a decline of 15 percent compared to 2018, according to **Goldman Sachs**. This year, share buybacks are expected to decline by another five percent. The main reason a quoted company engages in share buybacks is that in doing so, it lowers the number of stock shares available, which not only triggers a rise in share prices, it strengthens earnings per share numbers, which are often tied to incentive scheme pay-out trigger targets. Another reason why companies leverage stock buybacks is to retain top company talent via stock compensation programmes. By buying shares of its own stock and giving those shares to star employees, the company is keeping them in-house. For their part, employees who gain stock option benefits can sell their shares after a specific period of time at a rate calculated into the vested amount of their stock compensation benefits. Companies may accelerate stock buyback programmes to save on cash outflows and consequently keep stock dividend payments at current levels. This not only results in fewer dividends having to be paid out (as the company purchases more shares of its own stock), it enables the firm to remain financially viable even as it pours cash into stock buyback programmes. However, senior executives have cashed in their vested equity packages to profit from the post buy-back share price uplift, thus upsetting shareholder groups. In 2017 and 2018, company insiders were found to be twice as more likely to sell shares in the immediate aftermath of a buyback announcement, according to the **SEC.** The price they sell their shares for is several times higher than the average sale price of the stock in non-share buyback periods.

*An unsolicited testimonial for employee share ownership came from Jane McVicar HR vp at CGI**,** a Canadian global information technology consulting and systems integration company, which has been named as a *Top Employer UK* for the ninth successive year. CGI has more than 5,500 employees who serve clients across commercial and government sectors. Jane said: "*We try to foster the importance of team achievements across the business through our **employee share purchase plan**. The share plan has been a facet of our global benefits package since we were founded 42 years ago. By June last year, more than 93 percent of qualified employees had joined the scheme. As a result, we like to call our employees **members**, as it better identifies them as critical stakeholders in the business and shows we're as invested in them as they are with us."*

***Republic of Ireland:** Fianna Fail, the party which pipped Sinn Fein by one seat in the recent general election, would retain state-imposed curbs on bankers' pay and bonuses if in government, the favourite to become Ireland's next finance minister told *Reuters.* Ireland capped executive pay at a max €500,000 a year during the euro zone's costliest banking rescue a decade ago. It banned all forms of variable pay and fringe benefits for even junior bank staff, restrictions lenders complain hinders them in attracting and retaining talent. Fianna Fail finance spokesman Michael McGrath said banks had to deal fully with a years-long mortgage overcharging scandal and parliament introduce laws to make senior bankers accountable for such failings before he would consider the matter. *"*It would be indefensible to lift caps and enable huge bonuses at a time when the banks are being investigated for misbehaviour.*"*

*The **Italian** Budget Law for 2020 introduced a **three percent** digital service tax (DST) on revenues deriving from certain digital services provided to users located in Italy, which applies to entities that meet certain revenue thresholds. The Italian DST applied from January 1 2020, without the need for any ministerial implementing decree and will be repealed once measures agreed at international level to tax the digital economy come into being (sunset clause). The Italian DST is inspired by the European Commission Directive proposal of March 2018, which was an *interim* solution to tax certain digital services where users contribute significantly to the process of value creation. Italian DST applies to both resident and non-resident entities, who meet, individually or at group level, the following conditions in the previous *calendar* year: total worldwide revenues not lower than E750m; total revenues from qualifying digital services provided to users located in Italy not lower than E5.5m. Therefore, an entity is subject to Italian DST on taxable revenues realised in 2020, if revenues in 2019 exceed **both** thresholds. The following services do **not** qualify as digital services for Italian DST purposes: supply of goods or services directly between users of the interface in the context of a digital intermediation service; supply of goods or services that are contracted online via the website of the supplier of such goods or services, and where the supplier does not act as an intermediary; the making available of a digital interface where the sole or main purpose of making the interface available is for the entity making it available to supply digital content to users or to supply communication services to users or to supply payment services to users, wrote *Taxand.*

US: Five of the biggest US technology firms paid just £237m in UK Corporation Tax in 2018 despite generating billions of pounds in profits. Analysis shows the corporation tax bill for Apple, Google, Cisco, Facebook and Microsoft would have exceeded £1bn if profits were paid on UK customers' bookings made in Britain. ***Tax Watch***, a think tank, claims the five firms made a combined profit of more than £8bn in the UK in 2018, based on revenue estimates for the true size of their British businesses. All file accounts in the UK, but much of their sales are directed via overseas firms through tax arrangements. Total sales and profits from UK users are not broken out separately. There is no suggestion this is illegal. Tax Watch claims this meant profits from UK consumers on digital adverts or sales were not recognised in Britain. Companies House filings show Apple paid £71m tax for its three UK businesses, Microsoft £24.7m, Facebook £30m, Google £73m and Cisco £40m. Based on US profit margins and estimates of the companies' actual UK revenues, Tax Watch says the chancellor may miss out on **£1.3bn** in corporation tax. Microsoft said it was fully compliant with local laws: "We serve customers in countries all over the world and our tax structure reflects that global footprint." Apple said: "We pay all that we owe according to tax laws and local customs wherever we operate." Google, Facebook and Cisco declined to comment. Tax Watch admits some of its figures are based on partial information – its figures for Apple are based only on iPhone UK sales data, rather than total income on all devices. UK accounts for Facebook reflect its marketing, sales support and services income but not its full digital advertising business. Tax Watch is backed by Julian Richer, founder of Richer Sounds, who has been outspoken on international tax issues. The figures come amid a growing debate over taxing digital technology giants in the UK. The chancellor is expected to introduce a two percent **Digital Services Tax** in his Budget this month.

*Bankrupt McDermott International seeks court approval to pay up to **$26m** in incentive bonuses to 13 management team executives because they play a "central role" in the engineering company's Chapter 11 restructuring. Under the plan, ceo David Dickson would receive up to $12.6m, according to the company's emergency motion filed in the US Bankruptcy Court. The Houston-based company, which provides engineering and construction services for the oil and gas industry, asked for up to **$79.4m** in quarterly bonus payments to retain 1,112 key employees.

*The committee of unsecured creditors in the Philadelphia Energy Solutions bankruptcy case has served up a scathing denunciation of the refinery's reorganisation plan, saying two rival offers to buy the refinery are flawed, and heaping scorn on the refinery's plan to pay millions of dollars in what it calls *bogus bonuses* for executives.

The committee, which represents creditors to whom PES owes more than $1bn, called the reorganisation plan *an artifice for doling out control, bonuses, and releases to insiders* and asked US Bankruptcy Court Judge Kevin Gross to reject it at a confirmation hearing in Wilmington. If the judge approves the plan, the committee asked him to suspend implementation while it pursues an appeal. The refinery, which employed 1,100 people, shut down last June after a devastating fire.

*Pacific Gas and Electric Co (PG&E) may be barred from paying bonuses to any executives or managers unless the company meets certain fire safety goals, a federal judge said. US District Judge William Alsup ordered PG&E to show why he should not force the company to tie "all bonuses and other incentives for supervisors and above" solely to the utility's fulfilment of its state-mandated fire-prevention plan "and other safety goals." The order came in response to PG&E's admission that it fell short on some of the commitments outlined in its fire plan last year. Afterward, Alsup said he might require PG&E to directly employ enough tree trimmers, rather than relying on contractors, to make its power lines safer. Alsup is overseeing PG&E's probation stemming from the 2010 San Bruno pipeline explosion. He expanded the probation terms to include compliance with the fire plan approved by state regulators. PG&E's bankruptcy case judge had allowed the company to award performance bonuses last year to many mid-range employees. However, that judge had refused PG&E's separate request to pay an estimated $11m up to $16m — in performance bonuses to its top executives, Alsup noted. When he denied the executive bonuses, US Bankruptcy Judge Dennis Montali said, "There is simply no justification for diverting additional estate funds to incentivise them to do what they should already be doing."

*Federal regulators slapped a $17.5m fine on former Wells Fargo ceo John Stumpf for his role in the bank's sales practices scandal. Stumpf accepted a lifetime ban from the banking industry too. In addition, the **Office of the Comptroller of the Currency** announced it was suing five other former Wells Fargo executives for a combined total of $37.5m for their roles in the bank's unethical practices. Two other executives settled with regulators, paying million-dollar fines. This is the first time regulators have severely punished individual executives for Wells Fargo's wrongdoing. The San Francisco-based bank has paid hundreds of millions of dollars in fines and penalties for encouraging employees to open up millions of *fake accounts* in order to meet unrealistic sales goals. Executives such as Stumpf did give up tens of millions of dollars in bonuses and pay but those actions were taken by Wells Fargo itself. Regulators laid the blame of Wells Fargo's failures directly at the feet of its former management. As part of their settlements and lawsuits against these Wells' executives, regulators want to ban all of them from working in the banking industry again. *The root cause of the sales practices misconduct problem was the Community Bank's business model, which imposed intentionally unreasonable sales goals and unreasonable pressure on its employees to meet those goals and fostered an atmosphere that perpetuated improper and illegal conduct*, the OCC said in its complaint.

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