Vol 33 No 4 January 2018

it's our business

newspad of the Employee Share Ownership Centre

Corbyn's threat to UK share schemes

An incoming Labour government's plans to nationalise the UK's rail, water and energy supplies and the **Royal Mail** would wreak havoc on the share schemes industry. Labour leader Jeremy Corbyn MP has stated that he would nationalise **British Gas, SSE, Eon, RWE, Npower, Scottish Power and EDF** if he became Prime Minister in 2020. He said he would put **National Grid** and Royal Mail back into public hands too.

There are *ten* main privatised UK water and sewerage companies – notably **Thames Water, Severn Trent** and **United Utilities** – which offer all-employee share schemes, especially SAYE-Sharesave and the Share Incentive Plan (SIP). It is difficult to see how these Eso plans would survive, were a Labour government to re-nationalise water companies.

Similarly, there are around 15 privatised rail companies who hold franchises to operate trains in Britain – notably **Virgin Trains, Great Western, Arriva Rail London, West Midlands** and **Grand Central.** In many cases, their employees were offered shares in their employer at very favourable rates and sometimes free of charge during privatisation. Incentives like these created large groups of first-time employee shareholders.

Some of these privatised utility companies have diversified and own major utilities in several countries or indeed are foreign-owned themselves. They would live on post re-nationalisation, but they would be forced out of the UK market if Mr Corbyn were elected to power and carried out his threat.

To reduce the immediate cost to taxpayers of renationalising the railways in one go, Labour may instead pick off these companies one by one, by refusing to renew their service operating franchises when they expire. It would only take one or two such franchise renewal refusals to destroy their share prices across the board.

Although Mrs May's government is not in imminent risk of collapse, post her deal with the Northern Irish DUP, some in the City and in business fear that growing pre-Brexit fissures within her Cabinet and the Tory Party generally could provoke an internal coup, or worse, as the withdrawal negotiations are set to enter a key phase in March.

Centre member **Linklaters,** the leading City law firm, has been assessing the legal implications of Labour's plans for government. It is estimated that the cost of re-acquiring the UK assets of *energy companies alone*, which include British Gas owner **Centrica** and network operator National Grid, would cost ***£124bn*** of taxpayers' cash.

Were all these companies to be re-nationalised in the wake of Labour winning an overall majority at the next General Election, Mr Corbyn's government would face the tricky problem of how much to repay these several hundred thousand employee shareholders, assuming

From the chairman

Employee share plan sponsors must be thinking carefully now about whether to launch new plans or whether to play safe and roll over existing plans. Last year's good news for employee shareholders is this year's problem: many equity markets are trading at record highs, so to invite employees to buy company shares at current high market prices - as part of a Share Incentive Plan - could be inviting trouble, even with the risk mitigated by matching free shares. Ditto the Company Share Option Plan, because tax-effective options can only be offered to employees at market price. Some plan sponsors will play safe by using SAYE-Sharesave instead, despite its dismal record at reaching all employees, because of the discount on offer.

There is an alternative - to offer employees free shares outright. At Christmas 2016, Danish ferry company DFDS celebrated its 150th anniversary by awarding 30 shares to each of more than 7,000 employees in a restricted stock unit plan. Years ago, British Airways did the same. Admiral, the car insurance company, has been giving free shares to all its employees every year, subject to performance.

Public companies ought to be more inventive in this field - why not give free shares to those of its employees who have served in post for five years - and a bigger free share allocation to those who've served for ten years? This at least would give corporates a better image, as well as help to cement employee loyalty. We have the answers to inequality if we dare more.

Malcolm Hurlston CBE

their shares and share options would be forfeited.

Long gone are the days when ‘New Labour’ Chancellor Gordon Brown saw Eso as a key tool in the battle to raise the productivity of the UK workforce. He introduced the All-Employee Share Ownership Plan (AESOP) which was later renamed the SIP. He introduced the Enterprise Management Incentive (EMI) to encourage gazelle companies to incentivise their key employees (not just the executives) by offering Income Tax free share options.

However, this cuts no ice with Corbyn’s people, who want ‘the workers’ to have full ownership of key pillars of the economy, via state control.

Even the **Communications Workers Union,** the Centre’s close friend, has been quiet recently about Royal Mail’s all-employee share scheme, the largest in the UK. The CWU’s general secretary, Dave Ward, who attended a major European Trade Union Confederation Eso conference in **Florence**, as the Centre’s guest speaker, is backing re-nationalisation at political level but can’t be insensitive to his members’ huge (135,000 participants) Share Incentive Plan (SIP) and the smaller parallel SAYE-Sharesave scheme, in which 35,000 postal employees participate, via regular savings. Its SIP, which was launched - as a free shares gift to all qualified postal workers - during Royal Mail’s privatisation in 2013, reaches maturity in October this year. After a roller-coaster year, RM’s share price closed at 452p each just before the new year. Collectively, RM employees own 12 percent of the total equity.

GDPR enforceable from May 2018

The implementation of the EU’s General Data Protection Regulation (GDPR) will affect many parts of corporate organisations, from candidate records to employee details, all of which are covered by the new rules. The GDPR was designed to harmonise data privacy laws across Europe, to protect and empower all EU citizens’ data privacy rights and to reshape the way employers across the region approach data privacy. Its aim is to protect all EU citizens from privacy and data breaches in an increasingly data-driven world. Although the key principles of data privacy have been retained in the GDPR, many changes have been proposed to the regulatory policies, wrote Barry Crushell of *Aperture Partners.*

The GDPR – which was cogently presented by **White & Case** at the Centre’s recent British Isles share schemes symposium - is enforceable from May 25 this year, at which point non-compliant employers may be liable to penalties. At the symposium White and Case gave participants a door-stopping background document with the caveat - anyone who doesn’t give this amount of information free is selling you snake oil. Both the document and the caveat were applauded.

As the GDPR is a Regulation, and not a Directive, it will have direct effect and needs only limited transposition into national law. The Irish data protection acts will require replacement. One of the biggest changes to data protection law will be the extended scope of the GDPR, above and beyond existing data-protection legislation. It will apply to data controllers and processors using information relating data subjects within the EU, regardless of the controllers’ and processors’ locations. A ‘data controller’ may be individuals, or companies, a public authority, agency or employer that, alone or jointly with others, determine the purposes and means of processing of personal data on a digital or structured manual files. A ‘data processor’ can be a company, employer or individual who holds or processes personal data, but does not exercise responsibility for or control over the personal data. A ‘data subject’ can be the candidates or employees to whom the data relates.

Employers will need to know certain key changes. The most important is the restriction on the use of consent in the context of the employment relationship. *From a legal perspective, it seems that the onus will be on the employer to show that employees have individually consented to their data being processed, that there is a legitimate interest in processing the data or a legal requirement to do so.*

The GDPR will give candidates and employees greater control over how their personal data is used, which will require a change in practice on behalf of most organisations. GDPR will require employers and HR professionals to state the legal basis for processing data, retention periods, the data subject’s right of complaint and provide information about individual rights under the GDPR. The conditions for consent to data being shared have been strengthened, requiring employers and HR professionals to use clear, legible and intelligible language in their engagements with candidates and employees. It requires that information provided should be in clear and plain language to ensure transparency and ease of access.

Many employers rely on employees’ implied consent to process their personal data and consent or data protection clauses are often included in the employment contract. However, under the GDPR, for consent to be valid, it must be freely-given, specific, informed and revocable. It states that, given the imbalance of power between employer and employee, the latter can only give free consent in exceptional circumstances. Consent is only one of a number of potential legal bases for processing employee data. Alternative legal bases include processing being necessary for the performance of the employment contract, required by law or in the employer’s legitimate interests which outweigh the general privacy rights of employees.

Candidates and employees will have a right under the GDPR to obtain information from employers about whether their personal data is being processed and, if so, where and for what purpose. It gives candidates and employees the right to access personal data, to exercise that right easily and at reasonable intervals, so as to be aware of and verify the lawfulness of the processing. Candidates and employees will have the right to be informed of their rights to request rectification, erasure or restriction of processing, to object to processing and to complain to the relevant data protection supervisory authority. Employers and HR professionals should ensure have their organisations have the right procedures in place to detect, report and investigate a personal data breach. Under the GDPR, breach notification will become mandatory in all member states where a data breach is likely to 'result in a risk for the rights and freedoms of individuals.' The **Data Protection Authority** must be notified within seventy-two hours of the controller or processor first having become aware of the breach, and if this timeframe is not met, reasoned justification must be provided. Similarly, affected individuals must be notified without undue delay.

The GDPR gives data protection authorities more robust powers to tackle non-compliance, including administrative fining capabilities of up to ***€20m*** (or four percent of total annual global turnover, whichever is greater) for the most serious infringements. It makes it considerably easier for candidates, employees and former employees to bring private claims against employers when their data privacy has been infringed. The GDPR will allow candidates and employees, who have suffered non-material damage, to bring a claim for compensation, as a result of an infringement.

EVENTS

The **Esop Centre/STEP Jersey share schemes for trustees** conference will be on **Wednesday May 2** at the Pomme d'Or Hotel in St Helier.

Newspad's next **international employee equity summit** will be hosted in **Paris** by senior Centre member **Linklaters,** at its offices in rue de Marignon, off Champs Elysees**,** in **June 2018.** Further details to be announced shortly.

MOVERS AND SHAKERS

Paul Arens has been appointed associate director for business development (Europe) at Centre member **Computershare.**

Nigel Mason co-authored the IPPR report on the EOT.

Centre member **Fieldfisher** was awarded Law Firm of the Year 2017 at *The British Legal Awards* @LegalWeek #BritishLegalAwards https://lnkd.in/guWzQt6. Congratulations to all concerned, especially partner **Graeme Nuttall OBE,** the employee ownership expert.

UK CORNER

Government urged to beef up EOT

Liberal-Democrat leader **Vince Cable MP** urged the government to increase tax incentives available to company owners who hand over control by installing **Employee Ownership Trusts** (EOTs). He backed an **IPPR** (**Institute for Public Policy Research**) report which claimed that the number of EOT companies in the UK could be increased to 20,000 by 2030, creating three million employee owners. He revealed in an interview with *City AM* that only *one in 20 UK private companies* offer any kind of employee share scheme.

Mr Cable said: "According to the fashionable economist Thomas Piketty, a combination of elevated returns to capital and stagnant earnings will eventually lead to the re-emergence of stratified rentier societies, in which what you inherit and who you know are the dominant factors in your life chances. This perfect recipe for increased class resentment, and social instability is already becoming apparent.

'One of the most compelling ideas to improve the workings of capitalism is employee ownership. Increasing returns to capital do not exacerbate inequality if that capital itself is widely distributed. Not only that; employee-owned companies have been shown to be more productive, more motivated, and more resilient in economic downturns than other firms

"However, as a report published by the IPPR shows, employee ownership remains a niche affair in the UK. Apart from John Lewis and Arup, few of us could name a worker-owned company. Financial wealth – including company shares – is even more unequally distributed than wealth in general, with the top 10 percent of the population owning 70 percent of it. In fact, despite Margaret Thatcher's dream of creating a share-owning democracy, both individual share ownership and British pension fund ownership of UK quoted shares are at record lows, and have declined since the 1980s. Among publicly listed companies, despite £62.4bn worth of their shares being owned by employees, roughly £60bn of this wealth belongs to the top tenth of households. Most of this is from management buy-outs or generous executive rewards, including shares. Meanwhile, only one in 20 private companies offer employee share ownership schemes at all.

"As business secretary in the coalition government, I helped to deliver useful reforms to increase the rate of employee ownership. One was the introduction of EOTs. By enabling a significant proportion (more than 50 percent) of a company's shares to be placed in a trust on behalf of its workforce, EOTs give employees a stake in the success of their company. Moreover, EOTs include substantial tax benefits if the stake granted to employees represents at least half of the business; in such cases the seller pays no capital gains tax at the point of transfer.

"Since their introduction in 2014, there are now over 150 EOTs in the UK, covering 12,000 people in firms ranging from five to 2,500 employees. But while the number of EOTs continues to grow, I accept that this growth should be faster, and the IPPR has useful recommendations on how to achieve this. Additional tax incentives, for example, could plausibly lead to more than 20,000 EOT companies by 2030, creating three million new employee owners.

"Empowering an ever-greater number of people to own the firms they work for would put Britain on a fairer footing and dispel some of the anger currently directed at capitalism and the market economy. On its own it is not enough – separate reforms are needed to rebalance ownership of land and property, for example. And there are other models of ownership to be encouraged, such as social enterprises and mutuality.

But as part of a broader programme to transform the UK into a true capital-owning democracy, employee ownership has a key role to play."

The IPPR report said: *"EOTs enable a considerable share of the returns to capital (company profits) to be distributed to labour, and for workers to exercise a much more significant role in the governance of the firm. The growth of EOTs can be incentivised by a number of reforms, including stronger tax incentives for the transfer of business ownership and for external investment and measures to build individual capital stakes for employees. At the same time reform of pension auto-enrolment to increase minimum pension contributions would allow employers to credit company shares to their employees' pension accounts. This would boost pension savings rates, allow companies to use the working capital, and help transform the level of employee ownership in the UK. Doubling the current rate growth of EOTs could see over 21,000 companies majority owned by their employees by 2030, with almost 3 million employee owners."*

The chairman met **Jo Swinson MP** last month, deputy leader of the **Lib-Dems,** who had ministerial responsibility for the EOT. Mr Hurlston said: "As deputy leader with the foreign affairs portfolio Jo retains an informed and close interest in employee ownership, both share and trust based. She is pleased the EOT is meeting a real need and is interested in its development as a attractive way of providing for business succession. She wants to be kept in touch with the Centre's work.' Jo Swinson was awarded a CBE in the New Year's Honours.

Rumpus over £126m LTIP bonus

Massive incentive share payouts to house-builder **Persimmon**'s senior executives under a maturing uncapped Long-Term Incentive Plan (LTIP) were attacked by politicians, charities and corporate governance experts, who described it as "obscene, corporate looting" and a reward based on "taxpayer subsidies." Nicholas Wrigley, chairman of Persimmon and remuneration committee chair Jonathan Davie announced that they were resigning as Persimmon started paying out £109m to ceo Jeff Fairburn on New Year's Eve. In all, Fairburn stands to net £126m in shares. Its finance chief Mike Killoran stands to pocket £88.5m and md Dave Jenkinson £63.2m. Persimmon said that the two were leaving in recognition of the fact they did not cap the remuneration scheme when it was introduced in 2012.

Persimmon is one of the biggest beneficiaries of the government's *Help-to-Buy* programme, which has lifted sales and boosted house prices outside London. Wrigley, a former banker, said he regretted not capping the company's bonus scheme and was leaving "in recognition of this omission." The LTIP was set up when house-builders were coming out of the doldrums of the financial crisis, and is now due to start paying out £800m shared among 140 senior staff. It was designed to reward executives with shares worth up to ten percent of the company's total value, depending returns to shareholders through dividends and other cash returns, with a potentially unlimited payout. Shareholders have made a total return of more than ***600 percent*** with reinvested dividends since the start of 2012. The LTIP was set out over a decade, rather than the usual two or three years, in order to drive performance in the sector, which is affected by a boom-and-bust cycle. When it was set up, 2,000 of Persimmon's 5,000 employees had been laid off. Since then, its share price has increased from £6.57 to c. £26.50 today. It is the third-highest climber in the FTSE 100 in the year to date, with its share price rising by 46 percent since January. About half Persimmon's 16,000 new house sales in 2017 were to buyers who used the *Help to Buy* scheme.

Stefan Stern, director of the left-leaning **High Pay Centre** said: "Some of these elaborate pay structures are so complicated that hardly anyone can understand them, including the shareholders who vote and the executives who profit from them. The world of fat cat pay is full of myths. In reality big businesses are complicated, and the crucial work is done by thousands of people. Leadership is important, but not so disproportionately important that a couple of people at the top deserve to get paid so much vastly more than everybody else. Share prices move about for a lot of reasons, very few of which can be traced back to the individual actions of a single person, whatever their level in the organisation. Yet this is the bogus premise on which executive pay packages are constructed."

Ashley Hamilton Claxton, head of responsible investment at **Royal London Asset Management**, said that the resignations "acknowledge the mistakes made in the construction of the plan". She added: "Let this be a warning signal to pay committees in the UK that poor pay decisions can have long-term consequences."

Last March, shareholders rejected **Crest Nicholson**'s remuneration report by 58 percent at its agm, although the company continued with its bonus plan, while **Berkeley Homes** has a similar remuneration scheme to Persimmon, meaning that chairman Tony Pidgley received a bonus of £29m this year.

Persimmon said: "The board believes that the introduction of the 2012 LTIP has been a significant factor in the company's outstanding performance over this period, led by a strong and talented executive team. Nevertheless, Nicholas and Jonathan recognise that the 2012 LTIP could have included a cap. In recognition of this omission, they have therefore tendered their resignations. The LTIP scheme was approved by 85 percent of shareholders in 2012. It is designed to drive out-performance through the housing cycle and to incentivise the management to deliver the capital return, grow the business and increase the share price. Unlike many other schemes, it extended to around 150 executives."

*More than 140 listed companies, including **JD Sports, Sky Group, William Hill, Ladbrokes Coral** and **Morrisons** appear in a *sin bin* register unveiling businesses have faced major investor revolts last year. The **Investment Association (IA),** the trade body for Britain's £7tn funds industry, published the world's first public register naming all the companies where at least *20 percent* of shareholders opposed one or more of the board's resolutions this year. Almost four out of 10 (38 percent) significant revolts at agms during 2017 were related to pay. **Thomas Cook**, for example, scrapped a bonus scheme this year after more than a third of investors rejected its plan. Bradford-based Morrisons suffered an investor backlash over its plans to bump the pay of ceo David Potts. Executive reward was the main reason for a shareholder dissent, but the re-election of company directors came second with 32 percent of resolutions on the register due to director issues. The register will include responses from some of the firms named, the aim being to publicly track if and how firms are responding to shareholder concerns. "The data reveals the true scale of investor concern and shows shareholders flexing their muscles by exercising their votes," added the IA.

Share plans news appeal

Newspad asks share plan advisers and issuers (sponsors) alike to email us news of your all-employee share plans. Your news could involve extensions or renewals to existing plans or about the installation of new plans. Alternatively, your news might concern a vesting of SAYE options or the impending fifth anniversary of a Share Incentive Plan. We particularly like to hear about Sharesave payouts and how people spend them. *Newspad* runs stories about executive equity schemes too, but only when they involve equity incentives (rather than cash) and more than 100 employees. Please email your news asap to Fred Hackworth, editor, *newspad*, at: fhackworth@esopcentre.com

Linklaters warns on trust registration

Linklaters has guidance from **HMRC** on new **anti-money laundering rules** and is setting out more information to help trusts decide whether they should be registered or not. Trusts only need to be registered if they have a UK tax liability. For EBTs and SIPs the relevant taxes are stamp duty reserve tax, income tax and capital gains tax. Inheritance tax is on the list, but employee trusts are not usually within this tax regime. EBTs, wherever sited, generally waive dividends, so they are unlikely to have income tax liabilities. Offshore trusts do not incur CGT on any share transfers, but Stamp Duty Reserve Tax is generally payable when trustees purchase shares. So SIPs and EBTs may be caught.

Trustees of trusts that incur a UK tax liability in the 2016/17 tax year must register the trust on HMRC's online Trusts Registration Service (TRS). This register is not public. If the trust has previously been registered with HMRC using form 41G, the trustees will need to register the trust again using the TRS. Once registered, the trustees must update the information to ensure it is accurate, but only if they have incurred a UK tax liability in the previous tax year. There are two deadlines:

- New trusts which incurred a UK tax liability for

the first time in the 2016/17 tax year must be registered by January 5 this year
- Existing trusts with a UK tax liability must be registered by January 31.

HMRC has just told the Institute of Chartered Accountants in England & Wales that it will not impose any penalties if the trusts are registered by March 5, though it has not officially extended the deadline. Linklaters reported considerable confusion and alleged inconsistencies from HMRC over the deadlines which, in future years, will be October 5 and January 31 respectively. The required information is:

- Name, date and place of administration of the trust, its tax residence, details of the settlor (company setting up the trust), trustees and their advisers
- Trusts accounts showing its assets and value when acquired by the trust
- Details of the beneficiaries.

Special rules apply to disclosure of the beneficiaries**,** as many EBTs and SIPs will have large classes of beneficiaries. If the number of named beneficiaries exceeds ten, the trustees will only need to identify the class of beneficiaries and provide the names of individual directors and key employees.

Directors and key employees are the staff responsible for running a business and making key decisions, or having a financial stake or ownership in the business. Details of a beneficiary (who is not named as a key employee or director) need only be given if they benefited from the trust after June 26 last year. The rules are complex, and include record-keeping (potentially even where there is no obligation to register). Failure to comply can result in civil and criminal liabilities. Depending on where your SIP/ EBT are sited and hold their assets, some or all the new rules may apply. You should ensure that your trustees are: aware of the deadlines; and able to provide the required information to HMRC. Re queries, please contact **Alex Beidas, Graham Rowlands-Hempel,** or **Mirit Ehrenstein** at Linklaters**.**

Trust law

The Law Commission is to make recommendations to amend the trust law of England and Wales, with a view to attracting new business to the UK in a competitive world. The current legal framework, based on the *Trustee Act 1925*, has been left behind by the development of new legal structures elsewhere in the world, the Commission argues – not least the British overseas territories and Crown Dependencies, as well as Singapore and New Zealand. 'Trusts are a significant source of business for the City of London and many international corporations use English law and courts to govern their arrangements', says the Commission. Other countries have come up with new trust, and trust-like, structures to meet demand, and have reformed their laws to try and secure a bigger share of the market," said the Commission. The project, part of its three-year work programme, will be a scoping study investigating English and Welsh trust law. The aim will be to see how the law can be modernised to benefit everyone and to help ensure Britain's trust services are competitive in the global market. STEP has supported the Commission in identifying areas of English trust law that could be improved. 'Trusts continue to play an important role in our society by allowing individuals freedom of choice in who should inherit their assets and to provide for and protect vulnerable beneficiaries,' said Robin Vos TEP, Chair of STEP's UK Technical Committee. 'I am delighted that the Law Commission has recognised this in its decision to consider how trust law in England and Wales can be improved and has, at the same time, acknowledged the significant contribution which English trust law makes in an international context.'

GVC shareholders rebel

More than a quarter of shareholders in online gambling company **GVC** rebelled against the pay of its senior management just a week after it bid for rival **Ladbrokes Coral.** About 27.5 percent of investors voted against a new directors' remuneration policy and 26.4 percent objected to a new annual and deferred bonus plan. This level of opposition – well above the plimsoll line of 20 percent - should put GVC into the Investment Association's *Sin Bin* list. Yet GVC has delivered total shareholder returns of 3,000 percent in the past decade – partly through its aggressive acquisition strategy, which has seen it consume larger rivals Sportingbet and Bwin. However some investors believe the pay of its top brass needs resetting. In its 2016 financial year, ceo Kenny Alexander saw his pay rocket 430 percent to £19.5m largely driven by the company's share price rise, fuelling the value of his share options. GVC said in its last annual report the impact of the share price rise in 2016 had contributed 79 percent of the value of Mr Alexander's reward.

Xavier Rolet, ex-ceo of the **London Stock Exchange (LSE)**, was in line for a *golden handshake* of up to £12.6m, as he left the company after a bruising boardroom row. The LSE said Mr Rolet had "agreed to step down with immediate effect" at the board's request. He had been due to leave next year, but one of the LSE's biggest shareholders claimed that he was forced out. Mr Rolet was paid his salary of £800,000 for 12 months of gardening leave, and a potential bonus worth £1.6m. Rolet, who led the LSE for eight years, also had a number of long-term incentives from which he could theoretically earn £10.2m. The move was aimed at drawing a line under a bitter dispute over who should run one of the UK's most important financial companies. It was announced too that the LSE's chairman, Donald Brydon, who faced a shareholder vote on whether to remove him from the board, would step down in 2019.

Uni snouts in the trough

The government is to clamp down on university vice-chancellors' pay, as uproar grew over details of their massively increased reward packages during the past two years. A *fair remuneration code*, due to be announced in January will limit vice-chancellors' salaries to 6.4 times that earned by their academic staff.

While sanctimonious guff is spoken about 'massive' rises in executive reward, the emerging scandal over pay-troughing by senior public sector figures like vice-chancellors, who in reality are paid by taxpayers, has shocked many. The difference between the two categories is that whereas private sector executives can be sacked at a moment's notice, public sector chiefs would either need to steal the office safe or murder a colleague before being forced out.

The largest ever *golden handshake* in the educational world was paid by **Bath Spa University**, where outgoing vice-chancellor was handed £808,000 in her final year reward deal. Prof Christina Slade, who left in August after five years in post, received £429,000 as '*compensation for loss of office'* on top of her £250,000 salary. The university's accounts reveal that, in addition, she received £89,000 of pension contributions, £20,000 in housing allowance and other benefits-in-kind worth £20,000.

Meanwhile, professors at nearby **Bath University** were in an open revolt against the golden goodbye awarded to their vice-chancellor. Scores of academics signed a letter to Prof Dame Glynis Breakwell, the chancellor and the chair of council, warning that the row over the vice-chancellor's pay packet had led to a "reputational crisis" for Bath University. They urged Dame Glynis, who is the highest-paid vice-chancellor in the country and the chair of council to step down from their posts immediately or risk further "embarrassment" to the institution. The intervention came as the Higher Education Funding Council for England, the universities watchdog, announced it was making enquiries into the retirement terms of Dame Glynis, after receiving a complaint that the university had broken its own guidelines by awarding her so much. Dame Glynis, whose salary and benefits totalled £468,000, announced last month that she intended to stand down after facing mounting pressure to resign amid a row over her pay packet. Staff were furious after it emerged that she would enjoy a six-month paid sabbatical and a golden handshake of £265,000. She will stand down as vice-chancellor in August 2018, but still enjoy her full salary for a further six months while she is on a sabbatical, and will have a car loan of £31,000 written off too!

The **University of Southampton** claimed that '*post-Brexit strategy*' justified paying its vice-chancellor £433,000 a year, as Sir Christopher Snowden became one of the UK's highest-paid university leaders. *"World-class capable leaders are needed to ensure that the UK's universities become one of the stars in the UK's post-Brexit export strategy*," said Gill Rider, chair of the university's council. Snowden's pay in 2016-17 was revealed as part of regulatory filing and showed a sharp rise from the £352,000 he received in the previous fiscal year. The university said his pay in the previous year was for just ten months in post and claimed the additional £80,000 was not a pay rise. The Universities and College Union (UCU), which represents academic staff, said the figure was "extraordinary", adding that it was the largest ever pay deal for a British university chief. Sally Hunt, general secretary of UCU, said: *"This simply cannot be allowed to continue; we need an urgent overhaul of how senior pay and perks are determined, and how our universities are governed. Clearly, when it comes to senior pay and perks in our universities, many vice-chancellors and senior staff look like they are living on a different planet. The time has come for proper transparency of pay and perks in higher education and for staff and students to be given a seat at the top table."*

Students now know what their still rising tuition fees are spent on – socking great annual reward rises for VCs, including luxury car loans, bumper relocation allowances and huge pension contributions.

Belatedly, universities minister Jo Johnson said he would introduce pay ratios to curb vice-chancellor pay and announced that a new regulator was about to end the gravy train of top academic pay rises, revealed *The Telegraph*. The code, to be issued by the Committee of University Chairs (CUC), will ban vice-chancellors from sitting on their remuneration committees, which decide how much to pay them. The committees will be made to publish an annual report and will need to disclose the salaries of the vice -chancellor and their highest earners. They will have to justify why pay increases have been awarded. The decision came with a warning that current "governance arrangements" would be overhauled in the coming months.

In a similar vein, ministers have informed fire brigades nationwide that it will no longer tolerate fire chiefs resigning with large payoffs, only to rehire themselves to neighbouring forces on a consultancy basis weeks later. About 250 ex fire chiefs have pursued this lucrative route in the past few years.

Announcements under the MAR, Disclosure, Guidance & Transparency Rules

*Under the terms of the **Bellway** plc Employee Share Trust (1992), 16,586 ords of 12.5p each (including dividend equivalent shares accrued between grant and vesting) were transferred on December 4 to Edward Ayres free of charge under the Bellway (2008) Share Matching Plan. Mr Ayres immediately thereafter sold 7,812 Bellway 12.5p ords at £34.70 per share to cover income tax and NI liabilities. The balance of 8,774 shares and the 3,859 Investment Shares he held in the plan were transferred to Mrs Jane Ayres.

*AIM listed **Ceres Power Holdings** granted share options on December 6 under the HMRC approved Ceres Power Sharesave Scheme, which was introduced to encourage wider employee share ownership in the company. Options to purchase a total of 2,265,603 ords of a nominal one penny were granted. These options will be exercisable between February 1 2021 and July 31 2021 at an exercise price of 10.6p per share. Included is a grant to Richard Preston, Ceres Power's cfo, who has been granted options to purchase 84,905 ords. Following this grant, Richard Preston now holds options over 6,830,679 ords.

***Chapel Down** plc announced that, following the exercise of share options under Chapel Down's employee share option scheme, application was made for 4,500 new ords of five pence each to be admitted to the NEX Exchange, for which trading began on November 16. Following admission of the new ords, the company has 101,020,948 ords in issue with each share carrying the right to one vote.

***Close Brothers Group** announced that a programme to purchase shares with an aggregate market value equivalent to £7.4m, had commenced in November. This is in line with the group's policy of hedging its exposure to executive share awards and options granted under its all-employee share option schemes. The share purchase of Close Brothers ords of 25p each was taking place within the limitations of the authority granted to the board by the recent agm - that the maximum number of shares to be bought back was 15.2m. The purpose of the share purchase is to meet future obligations arising from the group's all -employee share option schemes. The programmed share purchases will end no later than January 31 2018. The shares purchased will be held in Treasury and used to meet future share demand from the group's employee share plans. The group has entered into non-discretionary instructions with **Link Asset Services** to conduct the share purchase on its behalf and to make trading decisions under the programme independently of the group.

***GlobalData** plc announced that on December 14, it had purchased 5,000 ords at 590 pence per share. The shares will be held in treasury, in order to satisfy the exercise of share options under the company's employee share option plan. Following the purchases, GlobalData has 102,346,422 ords in issue with 180,000 held in treasury.

*__Jardine Lloyd Thompson Group__ plc was notified that the trustees of the company's Share Incentive Plan (SIP) allocated 11 shares of five pence each in the Company to each of five directors. These Shares have been acquired by the trustees of the plan via market purchase at a price of 1277.78p per share. The trustees purchased in total 5,898 JLT Shares at the same price, on the same date, on behalf of directors and employees of companies in the Jardine Lloyd Thompson Group, including certain UK subsidiary companies. This includes the shares allocated to the five directors.

***Maintel Holdings** plc was notified on November 28 that the Maintel Holdings Share Incentive Plan (SIP) acquired 692 ords of one penny each in the company, at a price of 745p per share. The SIP sold 55 shares on behalf an employee. Twenty shares each were purchased at £7.45 per share under the SIP on November 28 for PDMRs (Directors/Persons Discharging Managerial Responsibilities) R Grig, S Legg and K Stevens respectively and are held by the trustees of the SIP. Maintel said that E Buxton, N J Taylor and W D Todd, being PDMRs, are trustees of the SIP although they were not beneficiaries of this transaction.

***National Express Group (NEG)** was notified that on December 8, *First Names Corporate Services Ltd*, acting as trustee of the National Express Group EBT, purchased 1,000,000 ords of nominal value five pence each in the company at an average price of 369.2 pence per share. The trust holds shares for the benefit of the employees, in particular for satisfying the future vesting of outstanding awards made under NEG's various employee share incentive plans. Dean Finch, Chris Davies and Matt Ashley, as executive directors are amongst the potential beneficiaries of the shares held in trust. After this transaction, the trust held 1,643,746 ords for the above purpose, representing 0.3 percent of the company's issued share capital with voting rights.

***Numis** transferred, on December 13, 2,000,000 (1.88 percent) of its ords from Treasury to the Numis Corporation EBT No.2, for the funding of scheduled award vestings under Numis' various employee share schemes. The transfer price was nil. As a result, the total number of Numis shares held in Treasury is 10,061,088 (9.28 percent), the number of ords in issue remains the same and the total voting rights in the company are 108,377,448.

*__Ocado__ ceo Tim Steiner participated in the all-employee Ocado Share Incentive Plan (SIP), approved by shareholders at the company's agm in May 2011. Under it, employees are able to purchase ords in Ocado of a nominal two pence each at market value using deductions from salary each month, and receive allocations of matching ords. Mr Steiner purchased 59 partnership shares at a price of £2.511 per share and was granted eight free matching shares. These shares are held by the EBT for the SIP.

*****AIM listed **Smart Metering Systems plc** issued 688,566 ords of one penny each relating to the exercise of employee share options under both the approved and unapproved Company Share Option Plan (CSOP). The new ords have been admitted to trading on AIM under the block listing facility. The Company has almost 91m ords in issue. SMS does not hold any shares in treasury.

Shareholder democracy?

The **Financial Reporting Council (FRC)**, the regulator who oversees the corporate governance code for listed companies, launched a consultation to give employees a voice in the boardroom. The FRC consultation suggests three options – to assign a non-executive director to represent employees, to create an employee advisory council or to nominate a director from the workforce. TUC general secretary, Frances O'Grady, said it was "good that the code recognises the key role workers' voices play within businesses. The next step is for the corporate governance code to recognise the important role that unions play in the long-term success of companies," she added. The code operates on a *comply or explain* basis so that companies which ignore its provisions must provide an explanation.

The consultation – open until February – includes plans that would require firms to publish their gender balance too, building upon recommendations in the review by Sir Philip Hampton and Dame Helen Alexander, who died in August, in to boardroom diversity. The FRC proposed that these numbers include the first layer of management below the board and apply to all companies and not just the 350 biggest listings on the stock market.

The proposal that companies which have a 20 percent vote against their remuneration report would have to explain how they intend to discuss the dissent with shareholders – *as discussed at the Centre's recent share schemes symposium*- has been actioned already by the IA (*see separate story).*

The FRC recommended that all companies with a premium listing of equity shares, from their accounting periods beginning on or after January 1 2019, establish a remuneration committee of at least three independent non-executive directors. "The remuneration committee should… oversee remuneration and workforce policies and practices, taking these into account when setting the policy for director remuneration," said the consultation document. A description of the work of the remuneration committee in listed firms' annual reports should include "*an explanation of the company's approach to investing in, developing and rewarding the workforce and what engagement with the workforce has taken place to explain how executive remuneration aligns with wider company policy*".

Long-term incentive plans (LTIPs) will soon get even longer – but long-term board appointments will have to get shorter, according to the new **UK Corporate Governance Code**, as published by the FRC. Under the new Code, executives at UK-listed companies will be required to hold on to LTIPs, or bonuses paid as shares, for at least five years – rather than the shorter periods that still apply at a third of FTSE 100 companies. Equally significant, remuneration committees will be able to reject pay and bonus packages when a company's performance has been artificially boosted by currency movements or other factors unconnected with the skill and success of the executives.

No financial passporting post Brexit

The UK cannot have a special deal for the City of London, the EU's chief Brexit negotiator told the *Guardian* newspaper, dealing a blow to Theresa May's hopes of securing a bespoke trade agreement with the bloc. Michel Barnier said it was unavoidable that British banks and financial firms would lose the passports that allow them to trade freely in the EU, as a result of any decision to quit the single market.

"There is no place [for financial services]. There is not a single trade agreement that is open to financial services. It doesn't exist." He said the outcome was a consequence of "the red lines that the British have chosen themselves. In leaving the single market, they lose the financial services passport."

This will be bad news for any UK based multinational company which, post Brexit, wants to install a Europe -wide all-employee equity plan. For example, current exemptions from the EU Prospectus Directive would fall away if the UK is refused further seamless financial services transactions within member states (passporting).

The stark declaration quashes the hopes of the Brexit secretary, David Davis, for a unique trade deal that would include financial services. The Brexit secretary has called for a "Canada plus plus plus" deal with the EU, a reference to the free trade agreement struck between Ottawa and Brussels in 2016, but with the crucial addition of financial services.

In an interview with European newspapers, including the *Guardian*, Barnier said:

A trade deal could be agreed within a two-year transition period, but would have to be ratified by more than 35 national and regional parliaments.

The UK could not stop Brexit unilaterally, arguing that overturning the decision to leave would require the consent of 27 EU member states – a view at odds with one of the authors of Article 50, Lord Kerr.

The UK must follow all rules and regulations of the EU during the transition period, including new laws passed after the UK has left.

The UK could negotiate trade agreements with the rest of the world during the transition, but they could not come into force.

However, the **Bank of England** retaliated by unveiling plans to allow European banks to operate in the UK as normal post-Brexit. Banks offering wholesale finance - money and services provided to businesses and each other - would continue to operate under existing rules. It means EU banks operating through branches in the UK can continue without creating subsidiaries - an expensive process. Subsidiaries are forced to hold their own shock-absorbing capital which can't cut and run - they essentially become UK companies. Changing from a branch to a subsidiary could cost billions for a bank like **Deutsche Bank**, for example, which employs 9,000 people in the UK.

Currently, banks based anywhere in the EU can sell services to anywhere else in the EU thanks to the financial services passport.

A tit-for-tat response to Barnier's threat – forcing EU bank branches in the UK to become separately capitalised subsidiaries - would have encouraged European banks to pull out of London - gradually eroding its pre-eminence as a financial centre. On the other hand, London acts as the wholesale bank to the EU and access to its expertise and capital is highly prized. *"Some may see this decision as surrendering a trump card that should have been held back for the tough negotiations ahead. However, many thousands of highly paid people work in the London branches of big EU banks. That creates knock on jobs in other professions like accountancy and law. Those people pay a lot of tax to the exchequer too. Furthermore, services sold by the UK branch of a French or German bank to a third country like the US, for example, count as UK exports - something the government is keen to maximise,"* said Simon Jack of the BBC.

*The transition period, which permits a status quo after the UK leaves the EU will not continue beyond **December 31 2020**, Brussels announced. This deadline is three months shorter than envisaged by the May government. Terms of the transition period, which the UK calls an implementation phase, have yet to be negotiated between the two sides. The EU says the UK will have to continue to follow its rules and cannot adopt an "a la carte" approach.

*The Prime Minister's speech last September in Florence and Michel Barnier's response clarified that from the EU's perspective, the UK will be a '*Third Country'* from March 30 2019, when the UK leaves the EU. The two year transition period proposed by Theresa May in her speech requires an agreement to be negotiated and concluded between the EU and the UK before March 30 of that year, when all international agreements, like Free Trade Agreements, Comprehensive Air Transport Agreement, Horizontal Air Transport Agreements, Fishery Agreements, and more than 700 other agreements the EU has entered into with other countries around the world *will **not** apply to the UK any longer*, because any transition period agreed between the EU and the UK will *only apply* between the EU and the UK - but will **not** keep alive the UK's status under the international agreements of the EU with ***other countries worldwide***, unless those other countries agree. This will affect, for example, the US-EU Air Transport Agreement of 2007, the European Common Aviation Area Agreement of 2006, the European Economic Area (EEA) Agreement with Norway, Liechtenstein and Iceland and the bilateral agreements the EU has entered into with Switzerland. The UK does not intend to join the EEA after March 29 2019, thus the freedoms available therein, in particular, cross-border financial services (e.g. seamless transaction 'passports') will **not** apply to UK institutions. Theresa May proposed that the UK should stay in the Single Market and the Customs Union during the proposed two year transition period, but she did not say that the UK would be bound to any rules which the EU adopts **after** March 29 2019 during the transition period. She proposed that the UK should not be stopped from negotiating free trade agreements with third countries during the Transition Period, but it was doubtful whether this would be accepted by the EU.

*Her speech did not recognise the EU proposals regarding grandfathering existing trades in goods, customs arrangements, administrative and court proceedings. Nor did it recognise the role and importance which the European Court of Justice (ECJ) places on the competences and rights of the ECJ regarding international agreements when it comes to their interpretation in respect of rules stemming from the *acquis communautaire*. This was a key 'red line' for the Tory hard-line Brexiteers. It remains to be seen how any relevant dispute resolution mechanisms implemented for the purpose of the transition period would be qualified or rejected by the ECJ when called upon to decide about the constitutionality of the relevant arrangements for the transition period.

"Leaked documents from EU negotiator Michel Barnier suggest that Britain will get nothing more than a standard free trade agreement (FTA) for basic goods but not services," wrote Ambrose Evans-Pritchard in *The Telegraph*. "This might well be less than Canada's Ceta deal – perhaps 'Canada Dry' – since services are a mixed competence and require the backing of all member states. The revelation is that Germany's Angela Merkel was willing to give up final ratification of Ceta in order to forge a coalition with the Greens. If Berlin can be so frivolous in dealings with a Nato ally like Canada, Britain should count on nothing. An FTA deal does not need ratification but is worthless. *It preserves the EU's unfettered access to our goods market and safeguards their £80bn trade surplus, but offers no reciprocal access on services where we have a surplus. It hangs the City out to dry.*

"We should opt for a WTO framework, and make the £50bn divorce bill contingent upon EU common sense over airline landing rights, Euratom, food trade, and other cliff-edge matters. There were only two options for the UK after Brexit: a WTO clean break, or a Norway package in the European Economic Area. I preferred the softer Norway route, a compromise that might have preserved high access to the EU single market, with passporting rights for the City. We would have been outside the customs union and therefore able to strike other trade deals. Sadly, it is too late."

Brogues on the ground: Frankfurt and Dublin are the leading destinations for banks choosing to relocate away from the UK after Brexit, a board member of Germany's Central Bank told Germany's *Der Spiegel* magazine. **Andreas Dombret** said jobs shifted away from London will benefit Dublin and Frankfurt the most. "Above all, the big American banks are concentrating on these two cities". ***Twenty banks*** have chosen Frankfurt as their new EU hub, claimed Dombret, who is responsible for banking and financial supervision at the **Bundesbank.** He said that banks are keen to move *entire operations away from London, as opposed to simply shifting key areas inside the EU.* **Deutsche Bank** is likely to shift thousands of jobs to Frankfurt as part of a post-Brexit scenario. *Bloomberg* reported that an initial 4,000 jobs are expected to shift to the continent. Deutsche Bank may move £268bn of balance sheet assets out of London as it looks to build its Frankfurt hub. **Goldman Sachs** and **Morgan Stanley** are scouting for offices in Frankfurt. Dublin too has attracted significant interest from banks looking to maintain an EU base. **JPMorgan** is buying a building in the Irish capital capable of holding 1,000 staff from March. **Bank of America** has chosen Dublin as its preferred EU hub too.

Only **HSBC,** among the bigger players, has chosen Paris to be its future European HQ. However, France won a consolation prize – a third round EU members' ballot, beating Dublin, to host the **European Banking Authority -** much to the delight of President Emmanuel Macron. An office in *La Défense* and another in central Paris are possible locations for its new 200 strong EBA headquarters. Staff transfers from the doomed London HQ will begin before the March 2019 Brexit. This means that Paris will host both EU authorities responsible for setting banking standards, as well as the **European Securities and Markets Authority**, the agency in charge of regulating financial trading. **Blackrock,** the world's largest asset management firm, reportedly shortlisted both Dublin and Frankfurt as potential new EU bases.

WORLD NEWSPAD

EU blacklists 'tax havens'

The **EU** named and shamed 17 countries in its first ever tax haven *blacklist* and a further 47 remain to be categorised, in an attempt to clamp down on the estimated £506bn lost to aggressive worldwide tax avoidance every year. The crown dependencies of **Jersey, Guernsey** and the **Isle** of **Man** are among those which await categorisation but are confidently believed to be on track.

The move was hailed as a vital first step, but the failure of the member states to agree on any sanctions for those on the blacklist provoked the European Commissioner for economic and financial affairs, Pierre Moscovici, to concede it was as yet "an insufficient response."

The blacklist includes South Korea, Mongolia, Namibia, Panama, Trinidad & Tobago, Bahrain and the United Arab Emirates. The EU claimed that these countries had failed to match international standards and had not offered sufficient commitments that they would change their ways during talks leading up to publication of the list.

Of the jurisdictions with links to the UK – Guernsey, Jersey and the Isle of Man along with Bermuda and the Cayman Islands – have been placed on a so-called '*grey list'* – meaning that they had committed to reform their tax structures by the end of this year (2018) to ensure, for example, that firms are not simply using their zero percent corporate tax rates to shield their profits. These jurisdictions will be regularly monitored by the EU. The Crown dependencies have apparently promised to introduce *substance* requirements, aimed at meeting the EU's concern that some of these jurisdictions "*facilitate offshore structures which attract profits without real economic activity.*" Whilst the form this commitment will take remains unclear, it highlights ways in which jurisdictions on the grey list can avoid being placed on the blacklist in future. Moscovici, has called on member states to set a precise timetable to examine the grey-listed countries' commitments in six months time.

The European Commission produced a scoreboard under which country jurisdictions were examined against objective economic, financial, stability and tax governance indicators. Risk indicators include transparency and exchange of information, preferential tax regimes and no corporate income tax or a zero corporate tax rate. The Commission's scoreboard was a first basis for the **European Council's Code of Conduct Group** to decide which jurisdictions would be relevant to screen in more detail. It further measured the transparency of the selected country's tax regime, their tax rates and whether their tax systems encourage multinationals to unfairly shift profits to low tax regimes to avoid higher duties in other jurisdictions. In order to avoid being placed on the blacklist in the future, all jurisdictions must comply with the EU fair taxation rules and must not offer preferential measures or arrangements that enable companies to move profits to avoid levies. Companies must implement anti-profit-shifting measures and meet the transparency standards previously set by the **Organisation for Economic Co-operation and Development (OECD**).

These new measures will have an impact on the conduct of anti-money laundering diligence in circumstances where entities are based in or have significant operations in blacklisted jurisdictions, and to a lesser extent the same is true for operations in jurisdictions on the grey list (that could be put on the blacklist within six to 12 months). Although sanctions and other penalties have yet to be designated for blacklisted countries, certain dealings with black-listed countries could raise both tax evasion and money laundering concerns.

The European Fund for Sustainable Development legislation includes references to the blacklist and the EU is due to release specific detail on any potential enforcement mechanism in the coming weeks, *with one possible penalty being that blacklisted countries may no longer be eligible to receive funds from the EU (save for aid development). Member states are likely to be encouraged to apply their own enforcement measures in order to add real teeth to being on the blacklist.*

Whatever enforcement regime the EU decides on for blacklisted countries, however, reputational damage and a higher level of scrutiny will be inevitable. Moscovici added that the blacklisting regime is an important step, but an "insufficient response to the scale of tax evasion worldwide."

However, EU Member States were not screened as potential jurisdictions to be included on the black or grey lists, and some anti-poverty and fair tax groups have heavily criticised this approach. The charity **Oxfam** said the blacklist "has to include at least 35 countries, including potential tax havens such as Switzerland and Bermuda, in order to be effective… at least four EU countries would be blacklisted if the EU were to apply its own criteria to member states."

International authorities have previously published similar blacklists, but most have struggled for credibility. The OECD's tax haven list published in June 2016 contained only Trinidad & Tobago. Meanwhile, several European jurisdictions already have blacklists, penalising specified low tax jurisdictions. However, these lists are often narrow in scope and do not include major offshore jurisdictions such as the Cayman Islands and Jersey.

Mr Moscovici called on member states to devise their own sanctions. "This list represents substantial progress. Its very existence is an important step forward. But because it is the first EU list, it remains an insufficient response to the scale of tax evasion worldwide. *I therefore call on the finance ministers to avoid any naivety on commitments. The countries that have taken commitments must change their tax laws as soon as possible. I call on ministers to agree quickly on dissuasive national sanctions. We must do everything we can to keep up the pressure on all of these countries. We must not accept unfair tax competition and opacity."*

With its influence on the wane, the UK government tried and failed to ensure those jurisdictions would not be screened by the EU's tax experts but was overruled. A further eight jurisdictions affected by recent hurricanes will be addressed in February. The others on the blacklist are: American Samoa, Barbados, Grenada, Macau, the Marshall Islands, Palau, St Lucia, Samoa and Tunisia.

Exec pay deal opposed

Almost half of baker **Aryzta**'s shareholders opposed the Irish-Swiss group's executive pay deal at its recent agm. Aryzta, owner of the *Cuisine de France* bakery, paid executives retention bonuses equivalent to 50 percent of their pay for staying with the business following senior management departures. This prompted a major revolt against the company's compensation report. Investors holding 18.7m shares, 46 percent of the company, voted against it, while 22.2m (54 percent), supported it. Chairman Gary McGann acknowledged that the vote in favour was lower than the board would have liked. He explained that many advisers would have opposed the retention payments on principle because they were not tied to performance targets, as most bonuses are. He said the board had explained to investors the difficulties that had led to the payments. New ceo Kevin Toland said shareholders overwhelmingly supported Aryzta's LTIP for executives, which has defined performance targets. "That lays out clear metrics that are pertinent to the business," he said. Shareholders agreed to limit the maximum total that executives can be paid in its current financial year to €18m.

Capgemini Esop offer oversubscribed

French consulting & technology services giant **Capgemini** announced a high take-up rate of its fourth Esop offer. A share repurchase agreement to neutralise dilution allowed the purchase of 3.5m shares. The plan, aimed at aligning employees with the development and performance of the group, was a success, with a ***124 percent*** subscription rate, implying appetite for the maximum number of shares available to individual employees. About 29,000 in the 21 participating countries subscribed to the plan, representing 15.4 percent of eligible employees worldwide. This new Esop will help maintain Eso at close to five percent of total issued capital. Paul Hermelin, chairman and ceo of Capgemini said: "*The number of employees subscribing to the employee share ownership plan has increased by more than 60 percent on the previous plan, which was already a great success. This demonstrates once again their confidence in the group's strategy and development prospects. Capgemini thus remains one of the CAC40 companies with the largest employee ownership.*" Under the terms of the new Esop, the maximum 3,600,000 new shares offered, were subscribed at a price of €89.39 each. The corresponding capital increase of €321.8m took place on December 18. To neutralise the dilutive effect of the capital increase, Capgemini re-purchased 3.5m shares at a price of €102.20 each and for a total of €360m under the share repurchase agreement.

Norway: Sovereign wealth fund

When **Norway**'s £750bn sovereign wealth fund said it wanted companies to curb excessive and opaque top-management pay, it meant business. Since releasing a position paper last April, the world's biggest wealth fund has increased the number of votes against management compensation proposals in the companies it invests in, Carine Smith Ihenacho, its global head of ownership strategies, said in Oslo. It has this year voted against pay plans at **Alphabet,** Google's holding company, offshore driller **Noble** and media company **Liberty Global**, among others. Built on the country's petroleum income over the past 20 years, Norway's wealth fund has more than doubled since 2012 and crossed the $1 trillion mark earlier this year. It owns about 1.5 percent of all listed stocks in the world and invests in almost 9,000 companies, having opted to hold equities, bonds and real estate abroad to avoid spurring inflation in Norway. The fund operates according to ethical guidelines that span from human rights to environmental issues, and has cut its investments in tobacco and certain weapons producers, as well as in mining and in utilities that rely heavily on coal. It has taken on a more activist role in voting on management proposals, after flagging preferences such as the separation of ceo and chairman positions. The fund last year urged companies to ensure that a substantial proportion of annual reward be provided as shares that are locked in for at least five years, but preferably ten. Pay practices should be simple and total remuneration should be transparent. The fund has strict guidelines for its own staff. For example, it bars its senior executives from receiving performance-based bonuses and sets management wages at competitive levels, while avoiding becoming the market leader.

Bankers' reward back in focus

The debate over bankers' reward is back with a vengeance. In one corner stands **UBS** ceo Sergio Ermotti, who suggested that criticism of high remuneration is driven by envy – and in the other, Labour leader Jeremy Corbyn, who ramped up attacks on bankers after a City analyst criticised his policies. Average bank ceo pay has fallen, in real terms, by 49 percent since 2006 according to analysts at *New Financial*. The think-tank said that pay as a proportion of revenues at investment banks declined by nine percentage points to 37 percent over the decade to 2016. The fact that ceo salary is still on average $11.4m a year underlines their stratospheric levels of remuneration before the crisis. That's not out of line with other firms, as Ermotti pointed out with a jibe at 'big tech' companies. But neither Google nor Amazon took taxpayers' money; nor do they benefit from an implicit government guarantee which keeps their funding costs low. Bankers' pay has rebounded faster in the US than in Europe, where it has been held back by sluggish financial performance and regulation, including the EU bonus cap. In the UK, total annual bonuses in the financial and insurance sectors increased 9.7 percent to £15bn in the year to March 2017, below the peak of £18.4bn in the year to March 2008. Bonuses in New York's securities industry fell from an average of $190,000 just before the crisis to a low of $100,000 in 2008, before bouncing back to $146,200 last year, according to the Office of the **New York State Comptroller**.

Credit Suisse Group ceo **Tidjane Thiam**, who agreed to accept a lower bonus this year, said employees shouldn't think about a big pay rise as the bank emerges from two years of restructuring. "This year, with the improvement in results, there will be a balance," Thiam told Bloomberg TV. "You should not expect anything spectacular, but something fair. Not a big increase compared to the previous year." Credit Suisse, among the few banks to boost its bonus pool in 2016, is heading into the final year of an overhaul aimed at reducing reliance on volatile trading in favour of wealth management and emerging markets. The restructuring has included raising $10.2 bn) from shareholders to strengthen capital, with Thiam saying that all options are on the table for returning cash to investors in the future as profitability improves.

Flipkart buyback

India's largest online retailer Flipkart has completed its $100m repurchase of employee stock options, making it the largest-ever share buyback programme in the history of the Indian start-up ecosystem. Flipkart said that more than 3,000 existing and former employees of Flipkart, Myntra, Jabong and PhonePe had participated in the share repurchase programme. "*Employees are our biggest source of strength, without whom Flipkart couldn't have built the e-commerce industry in India. As an organisation, we believe they should be equal partners in Flipkart's success. This Esop repurchase programme is an extension of that culture, and a token of thanks for the dedication and hard work they have put in over the years. We're delighted to be setting the benchmark on this important parameter, not only in the startup industry but the wider Indian private sector as well,*" said Flipkart founders Sachin and Binny Bansal.

Flipkart has completed at least four such employee options buybacks in five years, though none on the scale of the latest programme. Japanese telecom and internet conglomerate **SoftBank** has offered to buy shares from investors and former and existing employees of Flipkart, a deal that would value Flipkart at roughly $9-10 bn. SoftBank offered to buy those shares at roughly $85-89 apiece and had also imposed certain caps on the quantity of stocks each employee could sell. Investment bank Goldman Sachs managed the share sale programme.

Employee share pool boosted by founder

Paytm founder and ceo Vijay Shekhar Sharma pledged c. five percent of his personal holding in Paytm Mall for its employee stock option pool. Sharma's move would add about $50m worth of stocks to the employee Esop, which will then account for ten percent of the company's total equity. Paytm Mall is the e-commerce subsidiary of **One97 Communications**. Sharma confirmed that he had allocated his personal stake to increase Esops in Paytm Mall as planned by the management. "I have given parts of my holding towards the employee share pool. I had done something similar long time back for One97 Communications and I have done this now for Paytm Mall," he said.

Bonuses for execs of bankrupt company?

Fat bonuses for **Toys 'R' Us'** top brass upset a US Department of Justice trustee. The toy retailer, currently in bankruptcy proceedings, won court permission to award millions of dollars to 17 executives — at least $16m — and double it in the future. The bankruptcy court trustee Judy Robbins argued that the proposed bonuses were excessive and were little more than retention bonuses meant to keep the executives from jumping ship due to uncertainty about the company's future. While companies in bankruptcy are allowed to issue incentive bonuses, retention bonuses are not permitted. "It defies logic and wisdom, not to mention the Bankruptcy Code, that a bankrupt company would now propose further multi-million dollar bonuses for the senior leadership of a company that began the year with employee layoffs and concludes it in the midst of the holiday season in bankruptcy," she argued in her filing. At the same time, the UK branch of Toys 'R' Us was busy planning the closure of 26 UK stores and making up to 700 employees redundant next spring. It had trebled the pay package of its former UK boss, Roger Mclaughlan, from £356,000 in 2014 to £1m in 2015, and another £1.3m for the year ending Jan 30 2016.

Robbins cited how five of the top US Toys 'R' Us executives received $8.2m in retention bonuses five days before the bankruptcy filing in September. The large debts, including c. $400m due by the end of last year, mostly stem from "a $7.5bn leveraged buyout in 2005, which loaded the company with debt to take it private," according to *Bloomberg.*

Apple boss's windfall

Apple's ceo, Tim Cook, has just received 560,000 shares, half of them linked to the company's performance. That was based on Apple's $159 share closing price. That equates to $89.2m, or £66.6m in total. He received the money because the corporation outperformed at least two-thirds of businesses in the S&P 500 Index.

Trump tax cuts change compensation rules

The **Tax Cuts & Jobs Act**'s changes to Section 162 (m) of the Code effectively eliminate the ability of a publicly held corporation to deduct annual compensation paid to a covered employee that is in excess of $1m, said *Baker Botts.* All (non-grandfathered) compensation in excess of the $1m threshold will be non-deductible, including qualified performance-based compensation and commissions. The scope of individuals who are covered employees is expanded to include the principal financial officer, as well as individuals who were covered employees at any time on or after January 1 2017. The scope of publicly held corporations for purposes of Section 162 (m) is expanded to include companies that are required to file reports with the **Securities and Exchange Commission** solely due to public debt. These changes to Section 162(m) apply for tax years beginning on and after January 1 2018.

Under current law, employers generally may deduct the reasonable compensation it pays for personal services as an ordinary and necessary business expense. However, Section 162(m) of Code provides a $1m annual limit on the deductibility of compensation expenses with respect to a covered employee of a publicly held corporation. *Nonetheless, for the last 24 years, qualified performance-based compensation and commissions have been exempt from this $1m deduction limit. For these purposes, qualified performance-based compensation included stock options, stock appreciation rights (SARs) and other compensation that was payable solely on account of the attainment of one or more pre-established performance goals if certain outside director and shareholder approval requirements were me*

For tax years beginning on and after January 1 2018: The Act amends Section 162(m) to eliminate the qualified performance-based compensation and commission exceptions to the $1m annual deduction limitation. As a result (and other than with respect to grandfathered arrangements described below), while compensation paid in excess of $1m for covered employee by publicly held corporations will no longer be deductible, such employers will no longer need to comply with the strict rules that were necessary to maintain qualified performance-based compensation arrangements.

The definition of covered employees subject to the $1m deduction limit under Section 162(m) is expanded under the Act to include cfos, former covered employees and their beneficiaries. This expansion to cover former employees will, absent grandfathering, subject severance pay, deferred compensation and other payments and benefits on or after termination of employment to Section 162(m) as well.

Transition Relief: Fortunately, the Act provides for limited grandfathering relief that preserves the deductibility of existing qualified performance-based awards, stock options and SARs that pay out after 2017. This relief applies to qualified performance-based compensation arrangements that were maintained under written binding contracts as of November 2 2017 and are not materially modified thereafter.

Potential Planning Opportunities: Companies subject to the $1m deduction limitation of Section 162(m) in 2018 may want to consider accelerating payment of compensation otherwise payable in 2018, such as 2017 year-end bonuses or severance payouts scheduled for 2018, to 2017 (to the extent this acceleration is permissible under Section 409A of the Code). For similar reasons, some executives in high tax jurisdictions may prefer that these payments are accelerated into 2017 in order for the state and local taxes on these amount to be deductible on the executives' personal tax returns. Of course, lower top marginal rates for federal income taxes in 2018 is a significant counterbalancing consideration that may cause executives to be better off recognising income in 2018.

Bonuses paid before March 15 2018 may be deductible in 2017 if the all events test necessary to fix the liability for the bonuses have been met as of December 31 2017. Companies that typically would take actions in 2018 to exercise discretion to determine 2017 bonuses may consider taking some binding corporate action before year-end to fix at least a portion of their bonus liability so that it may be deducted in 2017 against a higher corporate tax rate.

Additionally, employers should review their incentive plan documents, incentive award agreements, compensation committee documentation, severance agreements and employment agreements in light of the removal of the exception for qualified performance-based compensation. However, awards made after November 2 2017 will not provide additional deductions by following the strict rules for such performance-based compensation. Companies should consider amending these documents to provide for greater flexibility such as: employer discretion to adjust payouts upward (instead of downward only discretion currently required by Section 162(m)); using a more flexible set of performance objectives other than the more rigid shareholder-approved objectives determined in advance (including objectives that would allow for mid-year changes to the performance metrics when appropriate); allowing for acceleration of performance-based pay at target or maximum upon certain terminations instead of based only on actual performance; etc.

The Act has provisions that directly and indirectly affect stock compensation, whether in personal financial planning or in company stock plan administration, said the website *myStockOptions.com.* Compared to some earlier proposed provisions which didn't survive the legislative process, these are not really significant beyond the change in the Alternative Minimum Tax (AMT), which affects incentive stock options.

The core tax treatment of stock compensation has not changed. The Tax Cuts & Jobs Act keeps the current seven tax brackets, reducing the rates and changing the income thresholds that apply. The new rates are (percent) ten, 12, 22, 24, 32, 35, and 37, with the top bracket starting at $600,000 for joint filers ($500,000 for single filers). The flat supplemental rate of federal income tax withholding on stock compensation is based on the seven brackets. For amounts up to a $1m it is linked to the third lowest rate (22 percent) and for amounts over $1m it is linked to the highest rate (37 percent)

The income spread at *incentive stock options (ISOs)* exercise can trigger the AMT, which warrants complex tax planning. The income where this AMT income exemption starts to phase out in 2018 is substantially adjusted upward to begin at $500,000 for individuals and $1,000,000 for married couples. This AMTI exemption amount is phased out for high-income individuals by 50 cents (up from 25 cents) for every dollar of AMTI over those specified thresholds. These higher AMT income exemption amounts, and the much higher income point where the phase-out starts, make it much less likely that ISOs will trigger the AMT. With fewer employees at risk of triggering the AMT by exercising ISOs and holding the shares, companies may start to grant ISOs more frequently, given their potential tax advantages for plan participants. What pays in part for this change in the AMT calculation is the $10,000 cap on the deduction for state and local income taxes and real-estate property taxes on tax returns.

A version of the **Empowering Employees Through Stock Ownership Act** is part of the final legislation. Provisions from the 2016 Empowering Employees through Stock Ownership Act, which had got through the House of Representatives made it into the Tax Cuts and Jobs Act, which now has Senate approval. It is a good example of a successful bipartisan approach. Mr Hurlston said "Great news from US. Somewhat against expectations tax treatment for employees with stock in unquoted startups will be much improved. I like the fact there needs to be 80 percent participation."

This provision lets an employee in a ***privately held*** company elect to defer taxes at option exercise or RSU vesting for up to five years as long as the company's equity awards meet certain conditions. No change the capital gains rates (15 and 20 percent). A reduction in ordinary income rates would lower the difference between the income tax rate and capital gains rate. This reduced differential might affect tax-planning decisions, e.g. whether to hold shares at exercise, vesting, or purchase. While there is no change in these rates, the tax law creates a new income threshold for when the rate on long-term capital gains and qualified dividends goes from 15 percent to 20 percent ($479,000 for married joint filers and $425,800 for single taxpayers). That threshold is no longer similar to that of that top tax bracket.

*The Act leaves ESOP legislation unaffected, but it will have indirect effects, some of which could be significant, said **Loren Rodgers** of the California based **National Center for Employee Ownership.** The Act limits net interest deductions for businesses to 30 percent of EBITDA (earnings before interest, taxes, depreciation, and amortisation) for four years, at which point the limit decreases to 30 percent of EBIT. New leveraged ESOPs where the company borrows a large amount relative to its EBITDA may find that their deductible expenses will be lower and, therefore, their taxable income may be higher under this change. This change will not affect 100 percent ESOP-owned S corporations because they don't pay tax. Many questions remain on the impact of this change. Importantly, it is not yet clear whether the limit on deductibility of interest will apply to loans made after the Act or if it will apply retroactively. It is unclear what impact the bill will have on alternative structures, such as replacing simple interest with warrants or payment-in-kind (PIK) interest.

The legislation reduces corporate income tax from 35 percent to 21 percent of corporate earnings, and the expected result is to increase the projected size of corporate after-tax profits. Those larger projections will, in turn, increase the appraised value of ESOP stock and, therefore, the size of the repurchase obligation. In theory, this is not a problem for C corporations, because they will presumably have more cash on hand to cover the repurchase obligation. This change will affect 100 percent ESOP -owned S corporations because their shares are appraised as if they were C corporation shares.

Ireland: Tax advantaged Options for SMEs.

The Key Employee Engagement Programme (KEEP) – a dedicated share options incentive scheme for SMEs – was announced by the Irish Minister of Finance, Paschal Donohoe. It is aimed to support smaller companies attract employees in a competitive international labour market, by providing a tax favourable tax treatment for stock options. The new tax treatment for stock options will come into effect for awards granted between January 1 2018 and December 31 2023. Under the current legislation, the tax point under a stock option plan is triggered on exercise, however most employees are not able to afford to pay both the exercise price and the taxes due at this stage. Under the 'KEEP' system employees will not be taxed on grant or on exercise, but rather, on sale. Centre member **Solium** Global Compliance said: *"This is a welcome change for SMEs in Ireland as it will encourage employees to invest without the burden of paying tax to exercise their shares. Once the employee owns their shares, they will then have enough assets to sell-to-cover the tax on sale."*

Kenya:

Kenya Airways completed a debt and share restructuring programme that saw the government increase its shareholding to 49 percent while a group of 11 banks took up 38 percent of Kenya Airways after converting outstanding loans into shareholdings. It created additional shares to convert some of its debt into equity, leading to a 95 percent dilution of existing shareholders. Following the restructuring KLM saw its shareholding drop to 7.8 percent while employees will get a crack to own a stake in the airline through an Esop.

Staff of **Barclays Bank** of **Kenya** will soon be given an opportunity to acquire shares in their parent company **Barclays Africa Group** as part of the Johannesburg-based firm's Esop. The announcement was made in Johannesburg by the multinational's executives including deputy ceo Peter Matlare. "We want employees to have skin in the game," said Songezo Zibi, Barclays Africa's head of corporate communications. The offer will be made to all employees working in the various subsidiaries including Ghana, Uganda and Zambia, Mr Zibi said. The share-based compensation scheme will be rolled out as soon as agreements with tax and banking regulatory authorities are concluded. This will mark a rare Esop where a broad base of subsidiary employees are allowed to acquire stock in their parent firm. Such offers have been limited to top executives including those of Barclays Bank of Kenya and **Standard Chartered Bank** (Kenya) who have acquired shares in their parent companies in the past years. The planned Esop is part of a new strategy by Barclays Africa in which London-based Barclays has relinquished control after selling down its stake in June.

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