Vol 35 No 2 March 2019

it's our business

newspad of the Employee Share Ownership Centre

Threat to Channel Islands from malcontent MPs

A controversial amendment to force the three Crown Dependencies to reveal publicly by 2020 who really owns the companies on their registers has been tabled to the **Financial Services Bill**, a no-deal Brexit Bill.

Cross-party malcontents have ambushed the prime minister after the **Foreign Office** told the overseas territories months ago that they did not need to introduce compulsory public registers until **2023** – three years after the date MPs had thought they had set by law in a fractious parliamentary debate last May.

The Crown Dependencies – the Channel Islands and the Isle of Man – which have separate laws from the UK and which are controlled by the Crown, are furious that a last-minute attempt is being made by some MPs to over-turn the Foreign Office decision about company register disclosure.

The issue is politically explosive because some MPs claim that UK companies choose to register overseas because they want to hide the identities of the owners who hold such assets. However, the Crown Dependencies say that they already show company registers to the police when there are on-going investigations into specific allegations of fraud and/or tax evasion.

A cross-party alliance of MPs last May, led by the former Tory Cabinet minister Andrew Mitchell and the former chair of the public accounts committee Margaret Hodge, forced the government to concede that it would *introduce an order in council* by 2020 requiring public registers to be set up if the overseas territories had not done so voluntarily by that date.

Herein lies the confusion over when exactly the Crown Dependencies and British Overseas Territories – which include the British Virgin Islands (BVI) - would be required to make their company registers available for public inspection on demand.

The government wants to ensure that the 16 dependencies and territories act in unison on the issue, which clearly takes time to organise and ignores the differences between the crown dependencies and the overseas territories. For if one

From the chairman

I shall pass my column this month to former Jersey (and Isle of Man) regulator Helen Hatton. There is a case to be made for Jersey regulation already being in advance of that in the UK.

Malcolm Hurlston CBE

"Clearly, Jersey's committed position is to meet international standards. To this end we have enjoyed excellent results in evaluations by MoneyVal and the FATF with regard to beneficial ownership of companies incorporated in the island. The island has also met OECD standards on transparency. The beneficial ownership information of all Jersey incorporated companies is held centrally in the Companies Registry and is available immediately to law enforcement locally and internationally.

The practice of holding beneficial ownership information in the island is not new and was not adopted as a result of external pressure. It had developed from a law introduced way back in 1947 – just two years after the end of the German occupation of the island – by which any company which wished to issue shares needed consent from the Companies Registry to do so. Over the years, the criteria for that consent being issued has developed, starting initially with a description of the type of business the company contemplated undertaking, through its staff requirements to, more recently, its beneficial ownership. The beneficial ownership information has been held since the early 1990s and rules regarding updating it as shareholdings changed over the years were strengthened in the late 1990s and continue to be updated in line with changing norms.

This system is well regarded by international law enforcement and meets international standards."

Helen Hatton

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 e-mail: esop@esopcentre.com www.esopcentre.com

or two of them refused to agree, the risk would be that UK offshore company registrations would then ‘migrate’ to states where ownership secrecy was still the order of the day.

STOP PRESS: The government reportedly postponed the Financial Services Bill debate planned for the Commons, fearing it would lose the amendment (*see above*) requiring overseas territories to speed up the introduction of registers of beneficial ownership of companies - open to public inspection.

EMI tax incentives extended until April 2023

Despite the Brexit chaos, almost 10,000 UK SME companies can continue using the popular **Enterprise Management Incentive (EMI)** share options based scheme for at least four more years without fear that its generous tax advantages could be scrapped.

HMRC confirmed that the existing state aid approval for EMI, renewed on May 15 last year, will continue to apply until April 6 2023, *even in the event of a no deal Brexit*, reported Centre member Pett Franklin.

HMRC’s assurance is particularly significant because many EMIs these days are *exit only*, which means that tax advantaged share options awarded to key employees in qualifying companies can only vest if and when there is an exit event, usually when the issuer company is taken over. Clearly, the value of exit only EMI options would be severely degraded if that assurance had not been forthcoming.

Confirmation that current approval for the tax-advantaged EMI would continue to remain valid until April 6 2023, if the UK crashes out of the EU without a deal, came during a meeting between HMRC and leading tax advisers. As the Article 50 deadline approached, worried share scheme practitioners sought clarity from HMRC as to the status of the EU Commission’s state aid approval for EMI options in the still possible event of a *no deal* Brexit. Without EMI’s income tax and NICs waiver, plus its favourable CGT rate on participant gains, the incentive scheme would be useless. So now there will be no EMI hiatus, come what may on the Brexit front.

The decision will ensure that there will be no gaps or period of uncertainty after *Brexit Day* (*whenever that might be*), as was experienced when the previous state aid exemption approval for EMI expired in April last year with no renewal secured. For almost *six weeks* last year, the period after the previous EU state aid approval for EMI had expired and before the Commission’s decision to prolong it on May 14 – EMI virtually ground to a halt in the UK because of the uncertainty over continuation of its many tax advantages.

“Confirmation that EMI state aid approval will remain valid regardless of the outcome of the UK government’s negotiations with the EU is welcome news to share schemes advisers and to companies who are planning on granting EMI options in the future’’ said Pett Franklin.

The government’s guidance on the administration and operation of the various EU state aid approvals in the event of a cliff-edge Brexit states that under the Withdrawal Act, existing EU state aid approvals will be transposed into UK law after March 29. Additionally, it is expected that the **Competitions and Markets Authority** will replace the EU Commission (in the UK), supervising and enforcing state aid approvals within the UK. On March 29, the **EU Withdrawal Act** will, *if effected as it now stands*, repeal the European Communities Act 1972, which gives EU laws direct force in the UK and will convert into UK domestic law any EU legislation that previously had direct force in the UK (*i.e. laws that would otherwise have lapsed on the UK’s exit from the EU*). The guidance states that the CMA will enforce and supervise state aid in the UK. ***Most importantly, the guidance said that existing state aid approvals would remain valid and be carried over into UK law.***

Although the original renewed approval granted last year was *theoretically* valid until April 6 2023, in practice it would have ceased to be applicable when the UK ceased to be a member of the EU – but for the intervention of the Treasury/HMRC.

The EMI scheme allows small independent companies, with gross assets of £30m or less and fewer than 250 employees, to grant their key employees share options up to the value of £250,000 pp over a three year period. However, companies which are in activities such as banking, farming, property development, provision of legal services or ship building, are excluded. As EMI is a discretionary scheme, companies don’t have to award these share options to every employee and companies cannot have more than £3m worth of EMI options in total outstanding at any one time. Employees cashing in EMI options don’t have to pay income tax or NI if they buy the shares for at least the then market value which applied when the options were granted. Capital Gains Tax (CGT) is payable on EMI gains, normally at only ten percent.

By April 2017, *the most recent tax year for which relevant official statistics are available*, the number of UK companies which had EMI grants to employees outstanding (*over a period of up to three years*) had risen to **9,890**, making it by far away the most popular tax approved UK Eso scheme.

Changes were made by Finance Act 2019,

extending the 12 month period to two years – for which conditions must be met for **Entrepreneurs' Relief (ER)** to apply. The new two year minimum holding period requirement for EMI options will include the period during which the option is held; if the option is held for two years this condition is met. Where the business ceased to be a trading company (or holding company of a trading group) before October 29 2018, the 12 month period will continue to apply. For disposals of EMI shares acquired after April 5 2012, there is no minimum shareholding requirement in order for shares acquired to qualify for ER; the normal 12 month minimum holding period requirement for ER is modified and includes the period the option is held, so if the option was held for one year the 12 month holding period is met.

The second most popular approved share scheme, after EMI, in the 2016-7 fiscal year, was the **Company Share Option Plan (CSOP)**, which was being operated by 1,140 companies, while the **Share Incentive Plan (SIP)** and **SAYE-Sharesave** were way behind, operated by 780 and 510 companies respectively, though the number of their employee participants was far, far higher than in the case of EMI. Unfortunately official statistics only show the number of schemes not the number of participants so it is impossible to know accurately to what extent taxpayer-supported schemes are actually reaching employees.

EVENTS

Centre Symposium, March 7: Last chance

This is your last chance to register for the Centre's third **British Isles share schemes Symposium,** which takes place in central London on **Thursday March 7 2019.**

The **52** registrants to date include a substantial number of share plan issuer companies and trustees. Corporates who plan to attend this all-day event include the likes of: **BAE Systems, First Group, Landsec, Micro Focus, Rolls Royce, Thales** and **Unilever.** Some of these companies are among the *newspad 2018 Awards* winners who will receive their framed certificates at a special reception which will follow the afternoon topic slots presentations (*see one winner's - **Xtrac** - employee equity plan story below)*. **By registering for this event now, you can join them at the reception.**

The awards will be presented by the leading national Esop journalist: Paul Jackson of the Investors Chronicle.

The awards event and the symposium are being hosted by **Travers Smith** at its **Snow Hill London EC1** offices.

The speakers are: **Colin Kendon** of Bird & Bird; **David Craddock** of his eponymously named Consultancy Services; **Martin MacLeod** of Deloitte; **Jennifer Rudman** of Equiniti; **William Franklin & Eva Simpson-Fryer** of Pett Franklin; **Sue Wilson & Elizabeth Bowdler** of PwC; **Nigel Mason & Robin Hartley** of the RM2 Partnership; **Nicholas Greenacre** of White & Case**; Damian Carnell** of Willis Towers Watson; **Elaine Graham** of Guernsey based trustee Zedra and **Elissavet Grout** and **Kevin Donegan** of **Travers Smith.**

Channel Islands based trustee members **Estera** and **Zedra** are both logo co-sponsoring the **e-brochure**, which you can download from the event page at www.esopcentre.com.

Centre chairman and founder**, Malcolm Hurlston** will welcome delegates and introduce the programme, which includes:

*Employee equity plan case histories *Going global with your employee share plans *EMI and its almost tax-free rewards for key employees in SMEs *Exit-only Émis. *Alternatives for companies who cannot qualify for EMI tax-approved options. *Employee Ownership Trusts - What kind of businesses are using EOT and why? *Hybrid EOTs: the new way to structure MBOs & employee ownership *The employee shareholder experience – the UK and France compared *Share plans in volatile markets *Impacts of Brexit on employee share schemes *Q & A on regulatory & compliance issues - GDPR and Mifid II *Executive equity reward packages: new design parameters, performance share plans & shareholder activism; Executive share plans and the UK corporate governance code *Employee equity trustee concerns *Re-energising tax-approved share plans - the Company Share Option Plan (CSOP); SAYE-Sharesave and the Share Incentive Plan (SIP).

Fees: There is a **£395** admission charge for **Centre member** practitioner (service provider) **delegates**. Non-member service provider delegates pay **£595** for a seat.

*People from **plan issuer** companies will be admitted **free of charge***. Fees are subject to VAT. To book one of the few remaining places, email events@esopcentre.com or call the team on +44 (0) 20 7239 4971.

***Xtrac** is a one of the award winners which has opted to receive its star at the symposium. It is a world-leader in the design and manufacture of high -performance transmission systems and driveline components, supplying virtually all the world's top motorsport teams. Its EBT, established in 1997 continues to impress today. Xtrac's finance director, **Stephen Lane**, talked to **Anastasia Valti** of Centre member **Capdesk** about why employee share plans matter, what can make or break them, and the future of employee ownership:

What were the aims of your Eso? To provide the opportunity for employees to hold equity in Xtrac and therefore increase motivation in their work performance. Giving them equity helps to create a culture whereby everyone feels that Xtrac is 'their company.' While an intangible benefit, Eso is important in developing a strong and positive feeling of ownership within the workforce.

Why Xtrac is an newspad award winner? The plan, which has 220 employee participants, has provided equity participation for many employees over a long period. There have been corporate restructuring events over the years, which have enabled participants to benefit financially from their shareholding. This financial opportunity has been important, but the culture created by employees owning shares in their own company is equally compelling and a significant contributory factor to the enduring success of Xtrac.

Benefits of having an Eso: The share plan has been a significant part of creating the Xtrac culture which is vital in any team environment. It has been a contributory factor in the company's low employee churn rate. It reinforces the loyalty employees have towards the company, which helps managers plan their resource requirements.

Challenges faced: The plan is complex and administratively burdensome. Annual distributions have increased this complexity and corporate transactions have been subject to detailed structuring discussions to manage the plan and preserve its status.

*Effective communication***:** All new employees have received a trust booklet which outlines how the plan operates. Trustees are available to deal with any questions as they arise from members, and it has always been an agenda item at factory meetings.

Any changes planned? Since the Inflexion buyout employees have rolled forward some equity, which was important in maintaining the culture of employee ownership.

*Advice to others***:** Be clear as to its objectives. Understand the implications of how much equity the company allocates to employees. For example, in an owner managed business there may be a desire to retain more than 50 percent ownership. Seek competent legal and tax advice. Ensure the trustees fully embrace the concept and communicate effectively the *what, why and how* to staff. It's particularly important to ensure that there is an understanding that value from equity ownership is part of a corporate transaction. Provided it is well-structured and given sufficient thought when setting it up, an employee share ownership plan can be hugely beneficial to employees and the organisation as a whole; but it does require plenty of detail to be thought through beforehand, plus on-going strong management and administration.

Future developments: I think many companies are beginning to see the on-going benefits of Eso, which is to be encouraged. *Simpler administration, however, would be helpful.* I think the future will see an increase in the incentivisation of companies to offer employee plans to their staff."

Jersey share schemes and trustees seminar

The next share schemes and trustees seminar will take place in **Jersey** on **Friday, May 17 2019**. The joint **Esop Institute/Society of Trust & Estate Practitioners (STEP)** event will be at the Pomme d'Or hotel in St Helier. Don't miss this great opportunity to update your knowledge on the key issues. Talks will cover EBTs and the Common Reporting Standard; Share scheme and EBT issues on transactions; Entrepreneurs' Relief – a review following the introduction of the economic ownership test; an update on developments in UK employment taxes and much else. The presentations will run from 9:00 am to 1:00 pm (approx.) followed by lunch for delegates and speakers. **Ticket prices**: Esop Centre/STEP members: **£375**; Non-members: **£480.** Reserve your place by emailing events@esopcentre.com or call the Centre on +44 (0)20 7239 4971. Speakers attend the chairman's dinner the evening before.

MOVERS & SHAKERS

Kathryn Cearns OBE is to chair the **Office of Tax Simplification** and starts work there on March 18. She succeeds **Angela Knight CBE**. Alongside OTS tax director **Bill Dodwell,** Kathryn will provide independent advice to the Chancellor on simplifying the UK tax system for both businesses and individual taxpayers. Ms Cearns chaired the **Financial Reporting Advisory Board** to **HM Treasury** from 2010 to 2016 and the chartered accountants' Financial Reporting Committee from 2008 to 2017.

WEG: The Centre at work

The Worked Examples Group is inviting practitioners to submit worked examples for consideration. Examples should be sent to weg@esopcentre.com.

WEG is a joint initiative of HMRC and share scheme industry bodies— led by the **Esop Centre** with the Employee Ownership Association, Proshare and the Share Plan Lawyers Group. The aim of the initiative is to reduce uncertainty over tax valuations for share schemes following following HMRC's withdrawal of the *Post Transaction Valuation Check* (PTVC) procedure in 2016. WEG is chaired by Centre member

William Franklin, of Pett Franklin, and the secretariat is provided by the **Esop Centre**. WEG members are the nominees of the industry bodies. Other experts may be co-opted. The group's worked examples will be published on the HMRC website.

UK CORNER

Roadchef: compensation still awaited

Detailed and sensitive continuing discussions between the **Roadchef EBT1** trustee and **HMRC** about the tax treatment of the ex Roadchef share plan participants could further delay their long-awaited compensation payments.

Newspad wrote to the Roadchef EBT1 trustee and others, seeking precision on when exactly the surviving several hundred original **Roachchef** share plan participants will receive their compensation, how much they can expect to receive and whether their payments will be taxed.

Reed Smith, the Roadchef EBT1 trustee has told *newspad* by way of reply: "Sensitive and confidential discussions with HMRC continue. In addition, the trustee remains bound by specific confidentiality obligations and privilege. Accordingly, the trustee is not in a position to provide the information requested. The trustee will continue to update beneficiaries in the usual way once it has heard further from HMRC."

It is already more than *five years* since Mrs Justice Proudman ruled in the High Court that Tim Ingram-Hill was in breach of his fiduciary duty when Roadchef EBT1 transferred employee shares from the EBT into a separate performance shares trust he himself had set up within Roadchef, the motorway services chain. Ingram-Hill later sold their shares and his own Roadchef shares to Nikko, a Japanese company, in 1998, making a pre-tax profit of almost £30m. The fight for compensation lengthened when the trustee took up arms, on behalf of the beneficiaries, in a battle with **HMRC** over the recovery of the substantial sum paid by Ingram-Hill as 'tax' on his profits over the Roadchef share sale. As the judge voided that share sale, in law it did not take place and hence his tax payment was no such thing. The trustee won, but it is not publicly known how many extra millions will go into the compensation pot as a result. The trustee wrote to Roadchef beneficiaries last year, telling them that it hoped to make the compensation pay-outs sometime in summer 2019. That task was further complicated by the creation of three classes of beneficiaries: the original 350 or so Roadchef employee share plan participants (*some of whom have since died*); a smaller group who did not, for one reason or another, participate in the plan and finally 3,500 or

more people who have been employed by Roadchef since it was sold. Each group collectively gets respectively 61 percent; nine percent and 30 percent of the compensation pot.

Disguised remuneration bills deadline delay?

Entrepreneurs claim their lives are being destroyed by more than 45,000 back tax bills from HMRC, totalling **£3.2bn,** over so-called *disguised remuneration* schemes used since April 1999. Campaigners are in a bitter fight with HMRC over the application of the rules. ***Individuals have until only April 9 to settle with the Revenue or face heavy fines on top of the tax owed, but now MPs from all major political parties are calling for a delay while the true impact of the policy is assessed.***

Sir Ed Davey, a former Lib Dem cabinet minister, is chairing the parliamentary panel investigating the issue. He said HMRC and the Treasury were ignoring the anxiety and stress people are experiencing. The panel heard private evidence about a contractor facing the loan charge tax bill who committed suicide.

Sir Ed said: "The damage the loan charge will do to people is becoming clear and undeniable. *The Treasury must show some understanding of this and announce a delay to avoid the human impact it will otherwise have if it comes in on April 5 as planned."* He called for a "genuine" review. At least 50 Conservative backbenchers have signed a letter to the chancellor, demanding the same thing. The letter, seen by *Telegraph Money,* said that the policy was "undeniably retrospective" and "undermines the basic principle of tax certainty that underpins the UK tax system". Tory MP Ross Thomson said: "This has had a huge emotional impact on these people. You are doing something completely above board and then all of a sudden you are treated like some kind of criminal."

It was not always clear to the contractors, usually acting on the advice of accountants, that the arrangements involved loans. One told MPs the first she knew of a loan was when she received her first payslip.

Some small business owners who bought into E-shares, or partly paid share schemes say they were advised it was a legitimate way to pay less tax and may sue for alleged professional negligence, though for years the exact legal status of such schemes remained untested in the courts. Most schemes involved setting up **employee benefit trusts (EBTs)** in order to facilitate the contracted payment from lead employer to the entity carrying out the work, via an EBT, *which is why the Centre has always been interested in such loan schemes.* The use of employee benefit measures and share schemes needs to be above suspicion. The issue turns on how service suppliers were paid, using loans rather than salaries, sidestepping usual income tax and NI payments. The schemes were often complex, but a simple example is: *IT workers are hired for £6,000 worth of work. They are advised by their accountant to use an EBT, usually set up by a specialist company. The £6,000 is paid not to the IT workers but to the EBT, which then pays them in the form of a loan, after deductions for advisers' fees. There is no tax paid on the £6,000 and in some cases there was an understanding that the loan was unlikely to be repaid.*

Users complain that HMRC's 'Loan Charge' back tax bills are life-changing. The *Guardian* newspaper spoke to one family whose additional tax bill is more than £400,000 – owed by a 56-year -old who worked in IT for years and who says his only option now is bankruptcy. Another IT worker said his estimated bill was £300,000. *"I'm 54, have assets of £100,000 and earn less than £50,000 a year. I've already lost my partner due to the stress of this and have had suicidal thoughts. This will bankrupt me.* All I did was follow advice and do what was the norm at the time. This all happened ten to 20 years ago and one of the clients at that time was HMRC."

Though HMRC maintains that it had always advised that such schemes wouldn't work from a tax perspective, the exact legal status of such schemes seemed fogbound for years. However, in July 2017, the **Supreme Court** ruled that the scheme used by **Rangers Football Club** – which tried to pay staff via loans through an EBT - did not work. The court said that Rangers should have deducted income tax and NICs from payments they made to the scheme. This ruling set a precedent that the tax should be paid by employers. HMRC then said that the principles set out by the Supreme Court applied to a wide range of *disguised remuneration* schemes. Despite this firm footing, HMRC ***gave*** those concerned a *settlement opportunity* last year during which time employers and individual contractors could regularise their disguised remuneration tax accounts well before the new Loan Charge law came into effect. ***Employees who used the schemes years ago are being caught, as well as employers, particularly when the employer entity was set up offshore to run the scheme and/or when the employer could not, or would not, pay.***

Linklaters

HMRC has contacted employers and employees alike with loan charge tax demands and in total it expects to pull in an extraordinary **£3.2bn in tax**. In its official guide to the loan charge, it said: "*These loans are paid to people in such a way that means it's unlikely that they'll ever have to be repaid. In other words, the person receiving money from a loan scheme gets to keep it all. They don't pay any tax on this money, even though it's clearly income. It's highly unusual to receive your salary in loans and is clearly a method used to avoid paying tax."* It said on its website: "*Loan schemes - otherwise known as 'disguised remuneration' schemes - are used to avoid paying Income Tax and NI. HMRC has never approved these schemes and has always said they don't work. The loan charge works by adding together all outstanding loans and taxing them as income in one year. The result is that you're likely to pay tax at higher rates than you would have at the time you were paid in loans. If you settle your tax affairs before the loan charge arises, you will pay tax at the rates for the years you received the loans. The loan charge policy is expected to protect £3.2 bn, which can be used to support our public services.''*

An estimated 50,000 people have used a loan scheme that will, or may be affected by the tax hunt. Most of them work in the 'business services' industry, which includes jobs like IT consultants, financial advisers and management consultants.

*"We want to make sure everybody pays their fair share of tax and contributes towards the vital public services we all use. People who have used these schemes have a choice – they can: *repay the original loan, *agree a settlement with HMRC or *pay the loan charge when it comes in to force,"* added HMRC.

Some who have received large extra tax bills argue that they often had little choice when they were working as a contractor but to enter into these schemes. They are astounded by what they see as the *retrospective nature* of the charges, often dating back more than a decade, long after their tax returns were officially closed, as well as HMRC's refusal to accept reduced settlements and what they claim is their inability to challenge the charge. Not all were high-earning IT workers. A healthcare professional, who was a locum in the NHS for two years, said: "*I was advised to sign up with an umbrella company by my agency [and] advised that they were fully compliant with HMRC, I would not have to worry about end-of-year paperwork because it was fully managed by them. There was never any mention of 'loans' at any point and I do not recall ever signing any paperwork agreeing to receiving my income through a loan.*" This individual now faces an extra tax bill of about £20,000.

Richard Horsley, co-founder of the *Loan Charge Action Group*, said that many IT contractors fell into the loan schemes following a government measure in the late 1990s, known as **IR35**, to close tax loopholes used by some contractors. "At the time, tax professionals and QCs came up with solutions where we went on to PAYE for a portion of our earnings, while another portion was a loan, which was not taxable.'' He claimed that he was told that such schemes were not illegal. He said that about 25 percent of his earnings went in tax deductions, interest on the loans and the scheme promoter's fees. Now he is subject to loan charges that mean he will have to pay c. 80 percent tax on his earnings for that period. The Centre fully supports the HMRC stance but would like see more contumely heaped on the advisers and employers who promoted schemes which, tested in court or not, would never have survived a common sense "smell test."

Share plan reporting penalties top £2.4m

HMRC has issued at least £2.4m worth of fines to companies who failed to file their employee share scheme returns for the 2017/2018 tax year on time**.** As recorded by *newspad* last December, no fewer than 9,253 first penalties had been issued by late November (a £100 penalty is automatically issued, even if the return is one day late) and 6,014 second penalties issued (an additional £300 is charged if the return is more than three months late), plus a further number since then. However, it is believed that around 2,000 appeals are in the pipeline, which will bring the net level of fines down appreciably. Every year HMRC's **Employment Related Securities (ERS)** service issues penalties for share scheme returns not filed by the deadline date of July 6. "It will be interesting to read how many will receive penalties of a further £300 for their return being six months late, and then how many will start accruing £10 daily penalties once a return is nine months overdue," said RM2. HMRC is asking all companies to check they have filed their returns and that addresses and contact details are correct. As well as being late, share plan returns often include errors and HMRC set out the three most common made by companies filing their returns: *entering outdated or incorrect PAYE reference numbers; *using drag and drop to fill in the return templates – which can result in Excel automatically and wrongly updating columns such as the PAYE reference column and *not using sterling currency in the return template, which means that the price paid to acquire the shares is shown as an inflated value.

*****However daunting share plan reporting requirements may seem, diggers have found chinks in HMRC's formidable armour. Step forward Southport-based local tax advisers *Eaves & Co* who recently defeated HMRC in a case about the obligation (or not) to file a return after a share scheme ends. A company had submitted an online ERS return the previous year relating to a one-off share event, being an acquisition of shares by an employee. "*Quite reasonably, the company did not appreciate that HMRC expected an ERS return to be submitted the following year, bearing in mind there was no share scheme and no events had taken place. Without providing the company with a reminder that a return would be due, HMRC proceeded to raise late filing penalties when the return was not submitted,*" said *Eaves & Co*. "HMRC argued that a nil return was due for all subsequent years regardless of whether there were any share events. The manner of the penalty was worrying in that it provided no details of which legislative provisions it was based on, even after the penalty had been appealed against. According to HMRC, annual returns are to be submitted on or before July 6 each year and returns, including nil returns, "*must be submitted for any and all schemes that have been registered on the Employment Related Securities online service.*" It argued that, "*A return is required even if you have: had no transactions, have made an appeal/had an appeal allowed, rely on a third party to submit the return, ceased the scheme by entering a final event date; registered the scheme in error; registered a duplicate scheme; did not receive a reminder; have changed accountant/agent/staff. Once a scheme or arrangement has been registered on the service and remains live, plan sponsors have a continuing annual obligation to submit an electronic end of year return by the deadline.*'' The tax adviser said: "Clearly the legislation is somewhat unclear, however there was a strong argument that ***where no future reportable events were envisaged, they would no longer be within a reportable event period***. We were able to get HMRC to withdraw the penalties on the basis that *there was no employee share scheme* and therefore no ongoing obligation under the actual legislation to file returns. One suspects HMRC will not be changing its policy in this regard, but it does highlight the importance of challenging them where they apply policies that go further than the actual law."

Reward: feast and famine

Top executives at the UK's largest *private* construction business enjoyed a sharp rise in payouts last year despite ongoing losses and a bumpy refinancing that forced it to file its accounts months after the legal deadline. Five directors at **Laing O'Rourke**, which has worked on major projects such as Crossrail and Heathrow Terminal 5, were paid £3.4m in salaries and short-term incentives in the year to March 2018, compared with just £1.6m in the previous 12 months. Revenues fell from £3.2bn to £2.9bn and the company reported its third successive year of annual losses, though narrowed from £67m to £44m. A spokesman said: "While the numbers of directors remain the same, the make-up of the cohort has changed. *Our reward packages, at all levels, are evaluated against market rates and set appropriately*." Meanwhile directors at house-builder **Crest Nicholson** saw their pay packets evaporate as they missed out on bonuses after the company failed to hit profit targets. Ceo Patrick Bergin's remuneration slumped by more than half to £584,000 despite being promoted from chief operating officer at the start of the year. Chris Tinker, chairman of major projects, earned £461,000, down from £871,000. Pre-tax profits for the year to October were £176m, below the £222m threshold needed to trigger payment of 85 percent of the annual bonus. The board decided against paying out the remaining 15 percent, which is linked to client satisfaction.

Labour to limit public sector pay ratio to 20:1

An incoming Labour government would limit the maximum pay ratio in the public sector to **20:1** between the highest and lowest paid and demand evidence of the same pay ratio as a pre-condition for private organisations bidding for public-sector work.

This was promised by shadow business secretary **Rebecca Long-Bailey** at an event held by the **Chartered Institute of Personnel & Development (CIPD**) and the left-leaning **High Pay Centre**. She said that Labour would legislate to tackle the problem, by reining in the widening pay gap between the corporate elite and rank-and-file employees. Ms Long-Bailey pledged an executive pay levy on the largest private companies and broader reform of the corporate governance system. Labour wants further reform of company law so that shareholders' primacy over other stakeholders is removed. Recent reforms have seen guidance altered to recognise the damaging effect of short-termism in corporate decisions. From January 1 this year, under the latest version of the **Code on Corporate Governance,** companies had to start promoting "*proportionate remuneration which supports long-term success, with clearer reporting requirements,*" along with improved shareholder/stakeholder engagement and diversity in board succession planning. The key to curbing soaring pay among senior executives is to ensure HR is properly represented on remuneration committees, delegates were told. Speakers demanded a more powerful role for HR in formulating pay strategies and a restraining of long -term incentive plans for executives. Discussion centred around the news that the average FTSE 100 ceo is now paid £3.92m a year, a figure which has risen 11 percent in the past 12 months, way above the increase enjoyed by the UK workforce as a whole.

*There is now a statutory requirement for middle-sized and larger companies to *disclose the salaries and bonuses* paid to their executives. Companies need to explain the difference in pay between management and the average employee. They require all sizeable companies to report on how its directors take employee and other stakeholder interests into account and require large private companies to report on their corporate governance arrangements. Business secretary Greg Clark said: "The regulations coming into force will build on our reputation by increasing transparency and boosting accountability at the highest level – giving workers a stronger dialogue and voice in the boardroom and ensuring businesses are accountable for their executive pay. These new regulations are a key part of the wider package of corporate governance upgrades we are bringing forward as a government to help build a stronger, fairer economy that works for businesses and employees." Meanwhile the Centre's steering committee is working on a voluntary declaration through which companies will be able to demonstrate in annual reports and elsewhere their degree of all-employee engagement in share schemes.

Relative **Total Shareholder Return (TSR)** stands alone as the most popular long-term performance metric in the global marketplace, said Aon's second annual TSR report. In a compensation environment that increasingly places more weight and scrutiny on the link between pay and performance it ticks the boxes, it said. Advantages of relative TSR are that it: • is viewed favourably by many proxy advisory firms and shareholders; • creates strong shareholder alignment when properly designed; • offers complete transparency, with share price performance illustrated daily; and • allows for objective multi-year performance measurement often without the challenge of long-term goal setting.

Community pub shareholders

The Spotted Cow & Calf in Holbrook, Derbyshire, is no ordinary village post office. It's a pub, a café too and is owned by **225** local residents, who can pick up their pension and then sit and enjoy a pint with their neighbours. The takeover began in 2014 when developers announced plans to demolish the timber-framed building, built in 1604 and Holbrook's residents set about rescuing The Spotted Cow. They listed the site as an *Asset of Community Value***,** which gives a group six months to raise the funds to save an important building. A crowd-funding campaign offering locals the chance to become shareholders in their beloved watering hole for as little as £250, raised a total of £193,000 within four months. A £100,000 grant from Big Society Capital, a social investment fund, took them over the £275,000 needed to buy the property and pub was saved. A team of volunteers, from stonemasons to solicitors and software engineers, then began pooling their skills to renovate it. Every shareholder immediately becomes a member of the Holbrook Community Benefit Society and gets an *equal vote in how the pub is run*, regardless of money put in. Returns, however, depend on the size of the investment – and whether the enterprise makes money. "Any profit from the business is paid to members of the society as interest at a rate of three percent per share," Mrs Limb said. She explained that a year after opening, the pub is breaking even but not yet making profit, mostly because of the cost of the renovation, which was funded with a £125,000 loan from Co-operative and Community Finance, a social purpose lender. "But providing investors a return on their money was always our aim. We expect this to happen within two years."

As well as the threatened closure of its pub, Holbrook was on the verge of losing the local post office; its postmistress was due to retire after 32 years and there were no plans to replace her. The solution was to move all the post office services into the *Spotted Cow & Calf*, which now delivers pension payments and offers travel money and cash withdrawals – as well as selling locally baked bread, coffee roasted across the vale and ice cream from a dairy a few fields away. Aside from post office services and locally brewed ales, there are financial benefits to being a co-owner even before returns kick in. Shareholders in community-owned pubs and shops qualify for *Social Investment Tax Relief*, a government scheme to encourage investment in community ventures. Individuals can deduct 30 percent of the cost of their investment from their income tax bill, provided the shares are held for three years or more. Mrs Limb said: "Members were surprised and chuffed to get money back from HMRC."

Another community pub is *The Bell Inn* in Bath, which was taken over by the local community in 2013. It is now owned by 518 shareholders including cellar manager Jamie Matthews. "The pub was thriving and our regulars didn't want it to be shut down and turned into housing or a pizza parlour," he said. "Over the past five years the business has been really successful and the dividend we pay our shareholders has gone up every year. They now get five percent interest per year on their shares and we have had to put out a questionnaire about what we should do with the extra money from our profits. We are choosing between spending more on the bar, opening another site or putting the money towards doing good in the local community." Of 85 community pubs, not a single one has ceased trading.

BREXIT CORNER

*Clearing houses can keep serving EU clients in the event of a no-deal Brexit in a major boost for the **City** as it fights to retain its grip on the highly lucrative euro-clearing market. Clearing has been a debating battleground since the EU referendum, with politicians on the continent arguing that EU derivatives should be cleared within the EU, rather than London – post Brexit. However, Europe's markets regulator said that UK clearing houses **LCH, ICE Clear Europe** and **LME Clear** may continue providing services to the EU after March 29, no matter what the Brexit deal looks like. The **European Securities and Markets Authority (ESMA)** said it had granted the approvals to "*limit the risk of disruption*" and to avoid any negative hit on financial stability. The permissions will last for 12 months. The move comes weeks after ESMA and the **Bank of England** pledged to work together to keep financial markets stable in the event of no-deal. Clearing houses act as middlemen between buyers and sellers for financial assets. The UK emerged from a four-year legal battle with the **European Central Bank** over

clearing trades in the eurozone in 2015, but Brexit gave European mainland politicians reasons to restart the debate. City executives warned that ESMA's ruling did not mean the battle had been won. Conor Lawlor, a director at **UK Finance**, said it is "*far from being a silver bullet and significant risks remain,*" including the continuity of cross-border contracts, which had yet to be addressed. *Guardian* commentator Simon Jenkins wrote: "*With no fuss or publicity, the **Bank of England** and a group of City interests reached an apparently boring deal in Paris with ESMA. It follows a similar deal with the European Commission last December. Both state, in effect, that, as far as the City is concerned, **if** there is a no -deal Brexit, then Brexit did not happen - it was just play-acting by idiots down the road in Westminster. Up to **£41 trillion** in financial guarantees, insurances, hedges and other derivatives, all within the EU's regulatory regime, was said to be at risk in the City's clearing houses. For everyone involved, this is a grown-up business, not to be left to the mercies of Boris Johnson and Jacob Rees-Mogg. The regulators have duly issued licences to the clearing houses, allowing Europe's banks to disregard EU rules and continue trading on London's derivatives platforms. Financially speaking, London is to become a **free port**.*"

*More than 36 percent (80/222) of UK financial services companies tracked since the Brexit referendum said they are considering or have confirmed relocating operations and/or staff to EU jurisdictions in order to protect clients and investors post Brexit. This rose to 56 percent (27 out of 48) amongst universal banks, investment banks and brokerages, said the EY financial services tracker**.** Thirty percent (67/222) of companies tracked have confirmed at least one relocation destination in Europe to which they are moving, or considering moving, or adding staff and/or operations. Dublin attracted six and Paris attracted five more financial services companies from September 2018 to end November 2018. Around 2,000 new European mainland roles have been filled *locally* by financial services companies in response to Brexit, with Dublin, Luxembourg, Frankfurt and Paris the most popular locations.

*The UK's insurers warned that a no-deal Brexit would be an "*unforgivable act of economic and social self-harm,*" arguing that a delay to the process would be preferable to leaving the EU without an agreement. In the strongest warning on Brexit yet from the **Association of British Insurers (ABI**), the industry body's director general, Huw Evans, said that "leaving the world's single biggest trading block overnight with nothing but WTO rules to replace it … would be wholly inadequate and unprecedented". The insurance industry has been making contingency plans for a no-deal scenario for some time. Insurers have transferred *29 million* insurance contracts and set up almost 40 EU subsidiaries and branches. Speaking at the ABI's annual dinner in the City of London, Evans added: "*None of the EU's 20 largest trading partners trade with the EU on solely WTO terms; they all have deeper agreements in place*." The EU is by far the largest export market for the UK insurance and long-term savings industry, Evans said. The ABI has previously warned that millions of car and travel policies could be in limbo if there was no transition deal. Leaving the EU without a deal would mean that from April Britons driving in mainland Europe and Ireland will have to carry a motor insurance green card. The UK is the largest insurance market in Europe and the industry employs more than 300,000 people in the UK. Evans said that "as a last resort" Brexit should be subject to a short delay if no deal is the only alternative.

***UK professions rush to register in Dublin:** Fears that the powers of the EU's Mutual Recognition of Professional Qualifications could soon be lost have triggered a rush to get the "*Double Dublin*" - recognition by a professional standards body in Ireland may offer a passport for a person's qualifications into the EU after Brexit. That's the idea behind UK lawyers and barristers joining bodies in the Republic as a way to practise EU law across member states post-Brexit. Dominic Griffiths, of global law firm *Mayer Brown*, told *The Telegraph*: "There's been, across professional services, a massive flurry of activity literally in the last few weeks in relation to trying to get professional recognition in Ireland. It's incredible the number of applications made by UK solicitors to become Irish solicitors. It creates all kinds of issues. *Does the fact that I travel to Italy a lot to talk to potential clients mean that I'm practising law in Italy, or just being an English lawyer who is visiting?"* he asks. Professional business services in the UK account for 4.6m people in the workforce and are worth **£188bn** each year. However, there has been little mention of it in Brexit discussions despite the sector being worth more than the manufacturing, mining and extractive industries (such as oil) combined. Industry bodies are trying to secure greater clarity on the future status of their members' qualifications. Months ago, services chiefs including Nick Owen, chairman of **Deloitte**; Wim Dejonghe, senior partner at Allen & Overy; and Steve Varley, chairman of EY, wrote to the prime minister asking for something akin to the MRPQ directive be a top priority: "*Failing to negotiate these elements would impair our ability to provide our services with the same range, depth and speed our clients around the world experience today, damaging their businesses and putting our sectors at a distinct competitive disadvantage,"* they warned. The **Common Travel Area** is a key reason why the Irish peace process has worked. It's older than the modern peace process, and has existed in some form – though not fully codified – since the Twenties. It is a reciprocal blanket visa-style arrangement that allows the right to work, study, vote and access health and social benefits for Irish and British citizens in both countries. It informs the rights that underpin some of the provisions in the *Good Friday Agreement*. The UK Government has put the validity of the Common Travel Area in doubt by not solving the problem of how the working rights aspect will be protected with a mutual recognition of professional standards. *The Telegraph* said that there's a scramble to find a solution that will not undermine wider negotiations between Brussels and London, with the risk of a default no deal still on the table. However, once a solution for professional qualifications is found, Dublin will have a big advantage: freedom of movement, allowing it to cherry pick talent from the City. No other EU capital will have the same level of access to the UK labour market.

*Theresa May's government long ago entered negotiations confident of obtaining *passporting* rights – authorisation to provide services throughout the EU without the further approval of host-country regulators – for UK banks. However, in the past, the EU has granted non-member passporting rights only when the country –e.g. Norway, belonged to the European Economic Area. EEA membership confers not only rights but also obligations. Members commit to accepting EU financial regulation. In the event of a dispute, EEA members accept the decisions of the **European Court of Justice.** Technically, they have their own **EFTA** court, which has jurisdiction over not just Norway, Liechtenstein, and Iceland, but Switzerland too. In practice, however, the EFTA court follows the ECJ more or less in lockstep. That leaves the more piecemeal arrangement known as *equivalence*: individual regulations in the EU and a non-member state are deemed to be, for lack of a better word, “equivalent” to one another. The non-member’s banks can then provide the products covered by those regulations to customers in the EU. Equivalence is requested regulation by regulation, and *applies only to the products or services governed by that regulation*. The EU–US equivalence regime, for example, governs only over-the-counter derivatives and a limited number of other items. Where an item is not covered by equivalence, a US bank can provide it in Europe only by setting up a separately capitalised subsidiary. Economies of scope – the ability to provide a wide range of different financial services – are what make a financial centre. **Omar Ali**, UK financial services leader at EY, said: “As things stand, financial services firms have no choice but to continue preparing on the basis of a *no deal* scenario. The City is further ahead in implementing its Brexit contingency plans than many other sectors and our numbers only reflect the moves that have been announced publicly. *We know that behind the scenes firms are continuing to plan for a no deal scenario. The closer we get to March 29 without a deal, the more assets will be transferred and headcount hired locally or relocated. Inevitably, the contingency plans are for day 1 only, and in the event of no deal will represent the tip of the iceberg as longer-term plans will be more strategic and extensive than those publicly announced to date.”* The number of jobs that could relocate from London to the continental mainland in the near future stands at c.**7,000**, according to the EY tracker. This is a fall from previous estimates, owing to some companies fine tuning their projections and revising down their estimates, as well as deciding to hire certain roles locally. From last September to the end of November, nine companies had announced that they would be implementing product adjustments in light of Brexit. These include transferring customer insurance policies to new European subsidiaries and setting up European fund ranges. Two retail banks recently announced that they will set aside specific funds to help clients and extra money to help manage Brexit. Mr Ali added: “*Deal or no deal, financial services companies’ main priority is to protect their customers and investors from any post-Brexit fall-out and operational decisions are following a ‘prepare for the worst, hope for the best’ strategy. Whilst roles will no doubt move from the UK, many firms are only moving those employees deemed essential and are hiring locally given the expense of relocation.”* Since the referendum, 20 companies monitored have announced a transfer of assets out of London to Europe. Not all firms have publicly declared the value of the assets being transferred, but the Brexit Tracker has followed public announcements worth c. £800bn in total. **Goldman Sachs, JP Morgan, Morgan Stanley** and **Citigroup** have moved nearly **£321bn** of balance-sheet assets from London to Frankfurt and **Barclays** has won approval to move another **£166bn** of assets to its Dublin subsidiary, because it can’t wait any longer. BNP Paribas, Crédit Agricole, and Société Générale have transferred 500 staff from London to Paris. HSBC has shifted ownership of many of its European subsidiaries from the UK to France. Of those which have stated they intend to transfer assets out of the UK, eight are investment banks, six are insurance providers, and five are wealth and asset managers. Of the companies monitored by the Brexit Tracker, 27 companies have confirmed they are moving or adding some staff and/or operations to Dublin, up from 21 last quarter. Paris has gained in popularity, with 15 companies confirming they are moving or adding some staff and/or operations to the French capital, up from ten last quarter. Two more companies confirmed plans to move or add some staff and/or operations to both Frankfurt and Luxembourg, with the numbers rising from 15 to 17 and 14 to 16 in the last quarter respectively.

*More legislation and guidance has been issued to address the possibility of a no-deal Brexit. Statutory instruments have been issued to preserve the customs union with **Jersey, Guernsey** and the **Isle of Man**; HMRC launched an online service and a new Notice for overseas businesses to account for UK VAT on imports and guidance has been issued for temporary storage operators, customs warehouse operators, and customs agents. Further details are on **Deloitte**’s Indirect Tax Brexit Portal.

*****An open letter from the pan-EU lobby *FoodDrinkEurope* to EU Brexit commissioner Michel Barnier warned that **£51bn** of annual UK-EU trade in food and drinks would be jeopardised unless emergency measures were taken. It called on the European Commission to prepare “unilateral contingency measures,” including - soft-pedalling on customs clearance for up to 24 months and mutual recognition of certifications.

*The **Financial Conduct Authority (FCA)** is hosting two events for regulated firms in preparation for the UK leaving the EU. These events will take place in London on March 11 and

Edinburgh on March 14. Both will be livestreamed and allow viewers to submit questions. The FCA said: "Brexit contingency plans should now be well advanced, including your plans for communicating with your customers."

*International Trade secretary, Dr Liam Fox, confirmed to Parliament that renegotiations of the **EU trade deals** from which the UK currently benefits as a result of its EU membership had encountered delays. If the UK leaves the EU without a deal, its access to all of the 40 or so trade deals with about 70 countries including Canada, Japan, Turkey, and South Korea will need to be renegotiated from scratch. If the UK leaves under the terms of the Withdrawal Agreement, then the UK is seeking to 'roll-over' its access for the duration of the transition period, but it cannot be guaranteed that the UK will be covered by most of the trade deals. The EU would notify other countries that, during a transition period, the UK should be treated as if it remained a member of the EU, but it could not compel them to do so - and the UK would be legally bound to give the third countries all of the benefits of the existing trade deals. Businesses should review whether they are currently trading under a free trade agreement and assess the impact of losing access, said Deloitte.

COMPANIES

***Barclays** bank was desperate to avoid a state bailout so it could continue paying huge bonuses to staff, board minutes recorded during the financial crisis show. Bosses feared ministers would restrain pay, fuelling an exodus of top staff. Documents at a fraud trial in Southwark Crown Court showed high reward played a key role in Barclays' decision to raise private funds instead. The court was shown board minutes from October 2008, when the financial system was reeling and the Treasury wanted to bail out all the large UK banks. They said: '*The board ... noted there would inevitably be constraints placed on the bank related to dividends, operational flexibility and executive compensation*.' This evidence sparks fears that staff were mainly concerned about their own pay. Marcus Agius, then chairman, passionately defended high pay. Giving evidence as a witness in the trial of Barclays executive Roger Jenkins, former ceo John Varley and their colleagues Richard Boath and Tom Kalaris, he said: "*If a bank had a particularly talented banker, it would be most unusual for him or her not be offered more money by another bank to go and work for them*.' Prosecutors allege the four men illegally authorised secret payments to get Qatari investors to pump cash into Barclays. They deny the charges. The case continues.

***British Airways (BA)** management rejected union demands for a separate all-employee SAYE scheme to be re-installed at the UK airline, which is now part of the **IAG** group. Three trade unions had submitted an unprecedented joint pay claim to BA**,** calling for all-employee share ownership to be reinstated in the UK part of the airline**.** Unite, BALPA and GMB want improvements to pay, enhanced profit-sharing arrangements and the introduction of UK company-wide Eso. However, BA management brushed aside the union demands for a new all-employee Eso scheme, claiming that any such scheme would have to be introduced by its parent company and, as such, it didn't have permission to even discuss this. It said that the company's new corporate structure prevented new BA shares being issued ever again, though *some* employees do hold shares in the holding company IAG. As for profit sharing demands, BA said it would not be changing its current bonus scheme which is linked to "customer and operational metrics" – the airline however left open the door to explore changing the scheme at some unspecified point in the future. BA, when it was independent, was a strong supporter of Eso and for many years was an active member of the Centre. Sadly, this fell away when BA merged with Iberia in 2011, creating IAG**.** Page 31 of BA's 2017 annual report said: "*IAG has a number of equity-settled share-based employee incentive plans in which the group's employees participate. Prior to the merger with Iberia, the awards were made under schemes operated by the company and represented rights over its ordinary shares. These awards rolled over into awards in respect of shares in IAG at the merger. The awards are made under schemes operated by IAG and represent rights over its ordinary shares. The cost of these awards is recharged from IAG to the group and recognised in inter-company payables to IAG."*

Centre chairman **Malcolm Hurlston** said: "The Centre has long argued that companies which take over or merge with listed UK companies should be required to replace existing all-employee share plans with new ones when the original shares (e.g. BA) are delisted, but don't hold your breath. What is clear from this sorry episode is that these airline employees still feel great loyalty to brand BA, rather than to IAG."

***Blackwell's** owner Toby Blackwell, whose great-grandfather founded the famous Oxford based bookshop in 1879, has long pledged to hand over ownership to 450 staff via a John Lewis-style partnership. However, that handover, despite being facilitated by a trust set up by the 89 year-old, is contingent on the business meeting financial milestones that have eluded it so far. Blackwell's said a year ago: "Our commitment to a fully multichannel strategy is designed to lead Blackwell's towards an improved trading contribution over the next year and closer to the goal of sustainable profitability and *ultimately an employee partnership*." Although a date still has not been set for the launch of the partnership, legal documents have been finalised and preparations are under way. When completed, every employee will have a stake in the company as beneficiaries of an employee trust which will hold the shares on their behalf and have influence on how the business is run through a partnership council made up entirely of employee-nominated councillors.

***BT** is earmarking £1bn of the cash it generates to support its large pension deficit, to buy mobile phone spectrum and to buy back employee share options.

***Flybe** pensioners would have faced financial ruin if the £2.8m rescue takeover led by **Virgin Atlantic** had collapsed, after it emerged that the airline's retirement fund was not protected by Britain's pension lifeboat. About £170m of benefits owed to 1,350 members of the British Regional Airlines Group pension scheme would have been wiped out if the Exeter-based airline had failed because Flybe's pension fund is registered in the **Isle of Man**, rather than the UK, which means that scheme members are not entitled to payments from the taxpayer-backed **Pension Protection Fund (PPF)** in the event of insolvency. Flybe had a £11.6m pension shortfall in November 2018. Rival regional airline **flybmi** collapsed into administration last month, resulting in 376 redundancies.

***RBS,** the 62 percent state-owned bank reported profits had doubled in the last year to £1.62 bn, but revealed that staff bonuses paid across RBS totalled £335m last year - down £7m on the previous year's payout. It stated that 78 staff earned more than £880,000 last year. RBS said that this number represented just 0.1 percent of its total workforce and fell to 67 when pension and other benefits are removed. RBS reported its second successive year in the black and announced a £1.6bn final dividend, resulting in a near £1bn windfall for taxpayers. RBS ceo Ross McEwan saw his pay package edge up last year although his basic £1m salary was unchanged. McEwan received a total package of £3.57m, £91,000 up on the previous year, mostly via an LTIP award worth £1.1m.

Renault**'s board of directors voted unanimously to strip former boss **Carlos Ghosn** of up to €30m (£26m) in pay and equity based severance. Renault said its board had agreed to waive Ghosn's non-competition clause and as a result the company would not be paying the *golden parachute* compensation. This move was backed by the French government, which has a significant financial stake in the company. Ghosn's cancelled mostly equity incentives amount to two years pay, worth €4m-5m, plus about 460,000 performance shares worth up to ***€26m, two internal sources told *Reuters*: "*With respect to the shares granted to Mr Ghosn in 2015, 2016, 2017 and 2018 as chairman and ceo, both as part of the deferred portion of his variable compensation for the financial years 2014 to 2017, as well as the performance share plans for the years 2015 to 2018, their definitive acquisition* ***is subject to his presence within Renault,"*** Renault said. ***"The board unanimously notes that such condition is not met, thereby triggering the loss of Mr Ghosn's rights to the definitive acquisition of such shares."*** Ghosn was forced out of the company in January following his arrest in Japan for suspected financial misconduct at Nissan, Renault's alliance partner. He enjoyed legendary status in the automotive industry until he was charged with falsifying financial reports in allegedly under-reporting his compensation and for alleged breach of trust. Ghosn, whose arrest and *continuing pre-trial imprisonment* prompted concern about the strain placed on the Renault-Nissan alliance, has repeatedly said that he is innocent. Allowing his golden parachute to stand would have been politically explosive in France, whose president, Emmanuel Macron, still faces violent weekly *Gilet Jaune* (yellow vest) street protests over low pay, inequality and rural decay. French finance minister, Bruno Le Maire, had asked the government's lead board representative at Renault to "ensure that Mr Ghosn's compensation is cut as much as possible," a ministry official said. "We've always been against excessive pay. It's not about the presumption of innocence but ethics and decency."

***Ryanair** investors are preparing to launch a concerted bid to block boss Michael O'Leary's controversial **€100m (£90m)** equity bonus package. The low-cost airline shocked shareholders by announcing Mr O'Leary would potentially be entitled to the shares-based payout, despite being savaged by stock markets since last summer. This package was branded "ludicrous" and *The Sunday Telegraph* revealed that some of the City's most powerful institutions were plotting an approach to the **Investor Forum**, the corporate governance heavyweight which spearheaded a successful revolt against **Unilever**'s failed bid to move its headquarters out of the UK last year. Although its shares sank to a four-year low, Ryanair handed Mr O'Leary stock options that would be worth about €100m if annual profits double to €2bn "and/or" the share price reaches €21. Shares are currently worth around €12 each. 11 non-executive directors would all be eligible to buy 50,000 shares and potentially share a £5.4m windfall under the same terms. Ryanair had one of its worst years on record in 2018. Hundreds of flights were cancelled after industrial action by pilots, cabin crew and air traffic controllers. It then warned on profits twice in four months, blaming Brexit and bemoaning lower-than-expected fares. Questions over perceived corporate governance failings came to a head at last September's agm. Almost a third of shareholders voted against the reappointment of the airline's billionaire chairman David Bonderman. If O'Leary can hit his new targets, his reward would rank among the biggest ever given to the ceo of a UK public company. Jeff Fairburn was forced out last year as ceo of house-builder **Persimmon** over anger in the City and beyond generated by his £75m uncapped LTIP bonus, already reduced from **£110m**, which was linked to growth in the company's share price. The company did not say whether there would be any cap on the potential profit for Mr O'Leary and fellow directors.

***Sony Corporation**'s multi-billion takeover of **EMI Music Publishing (EMP)** resulted in huge windfalls for senior executives, especially outgoing Sony/ATV boss Martin Bandier. He and a few others are sharing c. **$200m**, thanks to an agreed pre-sale compensation payout structure. These executives have been incentivised to grow the value of EMP since 2012, when the firm was sold by **Citigroup** for $2.2bn. Sony acquired 30 percent of EMP on that occasion, while a Mubadala-led consortium snapped up 60 percent. Sony/ATV became the global administrator of the EMI Music Publishing catalogue. The top brass were told that, should they succeed in pumping up the value of EMP, they would share in the spoils come sale day. Last year, that day came: Sony Corporation paid $2.3bn to acquire the 60 percent of EMI Music Publishing it didn't already own, in a deal which closed in November. This $2.3bn sale gave EMP a $4.75bn total valuation – a 116 percent rise on its valuation under Citigroup's ownership. Sony subsequently acquired a further ten percent in EMP last year from the Jackson Estate, to take full control of the company. Now, *Page Six* reports that Martin Bandier, who will be leaving Sony/ATV after 12 years next month, will net almost **$100m** from a combination of bonuses and options or equity, which he cashed out from the Sony/EMP deals last year

***The High Court ruled in favour of transport and energy conglomerate **Stobart** in its battle with ex-ceo Andrew Tinkler after a boardroom feud, during which allegations were made that employee shares in an employee benefit trust (EBT) had been wrongly used in the battle for control of the company. Mr Tinkler was found in breach of his fiduciary and contractual duties on four separate counts, including sharing confidential information with retail billionaire **Philip Day**. The court ruled that Tinkler had criticised the board in front of other significant shareholders in an attempt to oust chairman **Iain Ferguson**. His dismissal was lawful, it was found. The City was gripped by Stobart's dogfight last year, which saw Mr Tinkler – who had been credited with masterminding the success of the company – fired after attempting to replace Mr Ferguson. He hoped to insert **Edinburgh Woollen Mill** owner Mr Day as chairman and gathered support from fund managers. Mr Ferguson was re-elected by a tiny majority and Tinkler called foul play. At a first hearing in Guernsey, he claimed that shares in a Stobart EBT account had been transferred in support of the incumbent chairman. Ferguson pledged to step down later this year. Tinkler intends to appeal against the verdict and called for the board to step down

WORLD NEWSPAD

US *corporate cocaine* share buy-backs panned

US lawmakers reached across the partisan divide to lambast Wall Street over share buybacks, dubbed *corporate cocaine*. Republican senator Marco Rubio announced plans to overhaul the tax status of the practice, while *Feel the Bern* presidential candidate Bernie Sanders said that buybacks were part of the "pervasive corporate ethos" of maximising investor returns "to the detriment of employees and the long-term strength of their companies." Share buybacks are certainly booming. The value of stock repurchases announced by US companies surged to more than $1 trillion last year, around seven times the amount in 2009, according to TrimTabs data. In the UK, blue-chip heavyweights Glencore, Relx and Lloyds all announced that they would sink billions of pounds into buybacks. Shareholder returns in the US have been turbocharged by Donald Trump's huge tax cuts in December 2017. Companies with spare money repurchase their own shares from the market, putting cash directly back into investors' pockets and improving the value of the shares. The earnings per share climbs, meaning that ideally investors that do not cash out in the buy-back scheme own a larger slice of a more valuable cake. However the criticism that unites Rubio and Sanders is that the buybacks divert potential long-term investment away from the economy and

employees and substitute a short-term sugar rush while shareholders sit on, rather than spend, the profits. Sanders and Democratic senator Charles Schumer earlier stirred the cauldron of anti-corporate sentiment in the US, calling for legislation that would stop companies from snapping up their own shares until they raise their minimum wage to at least $15 (£11.51), plus seven days of paid sick leave and decent pensions and healthcare. The senators argue that share buybacks are a major driver of increasing inequality and that the richest in society are the main beneficiaries at a time when wages are stagnant for the poor and middle class. Indeed, between 2008 and 2017, 466 of S&P 500 companies spent around $4 trillion on share buybacks, or around **53 percent of their profits.** An additional 40 percent of profits were paid out as dividends. Research from Goldman Sachs indicates that the wealthiest 0.1 percent of US households hold 17 percent of privately-held equities and the richest one percent own 50 percent. This is up from 13 percent and 39 percent respectively in the late 1980s. Following the recent tax giveaway under President Trump, which allowed major businesses to repatriate substantial amounts of cash, a huge proportion of the cash was spent buying back equity. A 2016 McKinsey study concluded that share buybacks rarely have a lasting effect on total shareholder return – the share price performance, plus dividends paid. That's because most companies do not time these purchases well. Since the year 2000, oil behemoth BP has spent more than $62bn on share repurchases. That's almost half the company's market capitalisation in dollar terms of $146.4bn, but over the same period, its share price has fallen by more than ten percent. A similar situation is seen in US companies such as GE.
Buy-backs are heavily criticised as a method used by some senior executives to flatter earnings, so they meet the targets for their personal long-term incentive plans. The latter is often characterised as a corporate misdeed, but the problem lies with how incentive plans are structured rather than buybacks per se.

Oz: Telstra chairman John Mullen claimed at the telco's agm last October that setting executive pay was the single most difficult issue addressed by directors of large companies. "Maybe there is a case for doing away entirely with all the complex schemes and just go back to a fixed salary commensurate with the difficulty of the role. Mullen's complaint hints at a simple fix: Let the authorities or a respected ngo publish a scale of executives' salaries and directors' fees, with vectors for company size, exposure to international affairs, regulatory complexity and industry-specific parameters. Convoluted executive enrichment schemes don't strengthen businesses, rather they undermine them by distracting the attention of the senior people towards satisfying the targets.

France: GAFA tax plan gathers pace
Apple agreed to pay ten years of back taxes to France, marking the latest victory for European governments pushing tech multinationals to pay their fair share of taxes in local markets. The iPhone and iPad maker reportedly shelled out close to €500m (£440m) after reaching a confidential settlement with French authorities in December, according to the French news magazine *L'Express*. Apple did not disclose the size of the settlement, but said in a statement: "*The French tax authority recently concluded a multiyear audit of our French accounts and the adjustment will be reflected in our publicly filed accounts. We know the important role tax payments play in society and we pay all that we owe according to tax laws and local customs wherever we operate.*" American tech firms have been heavily criticised for the small amounts of tax they pay in EU countries including France and the UK relative to the billions of pounds in sales they report. UK chancellor, Philip Hammond, recently announced plans to introduce a special digital services tax by 2020 on online firms making more than £500m globally per year. It's expected that the tax would raise more than £400m annually for government coffers. France is introducing its own *GAFA tax* – referring to Google, Apple, Facebook and Amazon – which would affect tech companies with global sales of more than €750m and €25m in France. That law would be retroactive to January 1 and is expected to raise €500m this year. Its settlement with Apple follows a spate of successful challenges launched by European authorities over unpaid tax in recent years. In 2016, Apple was ordered to pay €13bn in back taxes to Ireland by the European Commission, which said the company paid a tax rate of 0.05 percent on its European profits two years earlier. Amazon ended a protracted battle with France in 2018 after agreeing to pay the state €200m and saying it would start to declare all its earnings in the country.

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