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it's our business

newspad of the Employee Share Ownership Centre

Centre backs mission for underwater SAYE schemes

Senior Centre member Equiniti and others are seeking an immediate change to the SAYE-Sharesave regulations in order to help schemes where the fixed share option price is *underwater* – i.e. well above the current market value of the company's shares.

Equiniti would like to see the Treasury/HMRC introduce a new '*Look Back'* feature in the SAYE-Sharesave scheme rules whereby the initial option price offered to participating employees could be changed in favour of a new share option price equivalent to 80 percent of the market price of the shares - one month before the savings contract matures – if the scheme option price was underwater at that time.

Equiniti's analysis at one point in mid March showed that in 52 percent of the SAYE-Sharesave schemes it administers on behalf of clients, the employee share options were underwater and thus potentially valueless at maturity, because employee participants would be paying more to buy the shares than they were actually worth in the market. So the options – to buy the shares - are not exercised unless the share price recovers over the following six months. Participants can withdraw their savings, highlighting the low-risk feature of the scheme.

The *Look Back* proposal, which the Esop Centre featured in its key Budget wish-list last March, would, if implemented ensure that Sharesave schemes provided a valuable benefit even in times such as these. Under the Centre's *Look Back* proposal, the maximum number of shares under option would remain the same as at the time of the Sharesave plan launch. In addition, the Centre called for a change in the tax rules so that SAYE-Sharesave employee savings *(contracted contributions*) would come out of *gross*, rather than net, pay – to encourage more employees to participate in such schemes.

The Esop Centre is asking the Treasury for an urgent meeting to discuss how best to ensure dozens of SAYE-Sharesave schemes provide benefits even in difficult times. Centre chairman, **Malcolm Hurlston CBE** believes a *Look Back* feature in SAYE-Sharesave would attract ministers more if it were capped at a certain level of the employee's monthly investment. The current limit is **£**500 per month introduced under George Osborne. But the main point is to get the idea on the table.

When such schemes mature, participating employees can use their options to buy the shares at the fixed 80 percent discounted option contract offer price. However, this assumes that the share

From the chairman

When the chancellor implements Project Birch - an odd name, I know, with political as well as punitive undertones - the state will once more be taking equity in quoted companies, an essential step in current circumstances. This gives an opportunity to build in from the outset an exit with employees receiving shares. The former chancellor Sajid Javid would have seen the opportunity at once given his Royal Mail experience when he was secretary of state at Business and created a record-breaking employee stake.

But the idea should have equal appeal to the new government team which wants to send messages of hope and aspiration to the many in the current uncertain days. State ownership has been less politically contentious for some time, ever since railway passengers to the northeast preferred efficient services to private ownership however bad. Now we are in another postwar situation where the need for a powerful state is unquestioned. Let's make the case in advance for meaningful employee participation in Project Birch companies when normality returns. I would favour a step further too - encompassing people who are not technically employees but also contributors to the company. After all Mike Ashley (an early advocate of the open-necked shirt) has blazed the trail at Frasers with awards for zero hours contractors as well as full time employees.

Malcolm Hurlston CBE

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price has risen or at least remained stable by the end of the employee's saving period, but the pandemic knocked such assumptions haywire. Many companies offering SAYE-Sharesave are suffering from much reduced share prices, compared to those of three years ago. On May 26 2017, the FTSE 100 index stood at 7,547 compared to 5,993 on May 22 this year – a 20.5 percent fall in average leading share prices. Although there was a mini recovery in share markets during the last week of May, the future direction of the FTSE100 index was still very uncertain. In any case, the average share price index number disguised much steeper falls in some share prices, pushing their company Sharesave options deep underwater as some schemes reached or neared maturity.

Many discretionary Company Share Option Plans (CSOPs) are in the same predicament, some even more so than SAYE because CSOP options cannot be issued at less than the then prevailing market value (*three years hitherto, when the options were issued)*. The pandemic-inspired stock markets crash has placed most CSOP options underwater. However, the crucial difference between CSOP and SAYE-Sharesave options is that employees accepting CSOP options do not have to put any cash up front, whereas all SAYE participants have to sign and respect savings contracts. So employees holding worthless CSOP options at maturity do not feel that they have lost anything, other than the opportunity to make a profit.

However, not all Centre member plan administrators agree that SAYE-Sharesave needs a *Look Back* feature. **David Isaacs**, associate director, corporate markets, Link Group, is sceptical about seeking change to the rules at this time: "That seems like having your cake and eating it. What is more of a worry is the companies who are deciding not to re-launch at all," David told *newspad. "*Yes, there has been an unprecedented impact on the stock exchange and listed companies, however the beauty of the SAYE scheme is that it is no risk to the employees. The worst that can happen is that they get their money back, which is fair. Why would HMRC then also agree to a look back facility when the other broad-based employee share plan SIP offers that?

"I believe the phrase I would use is *caution against knee jerk reactions* to a once in 100 year event, but in order to support the economic recovery, companies who can, should launch at what may be deemed to be a perfect time a SAYE and SIP with an increased focus on those companies that have asked employees to reduce their salary as a direct result of Covid19".

Mr Isaacs added: "An employee can also now defer payments for up to one year for SAYE so in the event they do not need the funds and can wait 12 months couldn't they defer as we have seen on many occasions when employees felt stocks would continue to rise? Two other considerations would be:

- The Share Incentive Plan has the ability to offer an accumulation period so why couldn't an employer offer both an SAYE and a SIP with an accumulation period, which offers the lower price between the launch and the end of the accumulation period;
- If we look at overall inequality, now would be the best time to launch an all employee share scheme in addition to the fact that if we really want to tackle high pay surely the answer could be using Discretionary Awards (on a multiple to be linked to Executive Discretionary Awards).

"In summary there is enough flexibility out there with the share plans we have, and now is the right time to launch them," he said.

Chancellor Rishi Sunak was new to his job when he delivered his first Budget early last March and may not have had sufficient time to examine in detail all the recommendations beforehand. Weeks later, the economy was put into the freezer, as the pandemic took hold. Now that the chancellor is desperate to put more money into employees' pockets to help reflate the economy, supporters of *Look Back* may feel that their time has come.

Centre members, such as **Jeremy Edwards,** share schemes partner at Baker McKenzie, believe that a credible way out for thousands of employers facing a cash flow crisis and for the chancellor when, inevitably, taxpayer-financed job subsidies are tapered off, would be to give public support to *Shares For Salary* schemes. Jeremy told *newspad: "*As the enormous adverse economic impact of the Covid-19 crisis becomes ever clearer, there is a pressing need for most companies to preserve cash. One tool that companies have at their disposal to preserve cash (while retaining employees) is to pay employees (especially more highly paid employees) a bigger proportion of their remuneration in shares, rather than in cash."

Jeremy's idea is that, to reduce the need for mass redundancies, hard-pressed employers offer to keep more highly paid employees at work provided they accept (say) 20-25 percent of their former pay cheques being substituted by employee shares, either given to them free of charge, or for nugatory amounts. However, there are a number of obstacles to overcome before the *Shares for Salary* kite will fly, which he will explore further in our July edition.

Mr Hurlston said that solving the problem of underwater Sharesave share options could encourage thousands of UK employees to save and participate in all-employee share schemes, providing a huge boost to share plans. He said: "Share schemes are an introduction to risk, but with

the admixture of a savings element in the case of ShareSave which reflected the circumstances of the time. Now employees asking whether the risk/reward ratio has moved unfairly to their disadvantage could find *Look Back* reassuring."

Jennifer Rudman, Equiniti's industry director (share plans), explained: "In December last year, 15 percent of the Sharesave schemes we administered on behalf of clients were underwater. Moving forward to mid-March the number had risen to 52 percent of schemes. We support the idea of lobbying for change to Sharesave by introducing an option price 'look-back' (enabling the option price to be reset to 80 percent of the market price one month prior to the maturity date, if the starting option price is underwater). This change would provide gains to employees exercising their option, as well as cash for the company."

NB Centre adviser members: *Do your clients have similar underwater share options problems with their soon to mature SAYE-Sharesave schemes? If so, please tell the Centre what you and your clients think should be done about this. We may use your comments on this issue as part of our Treasury representations. Replies asap please to newspad editor Fred Hackworth – email:* fred_hackworth@zyen.com.

Employee share awards: an antidote to Covid-19?

Companies are wondering how to continue to reward and motivate employees while preserving cash. They are looking at new and inventive ways to strike the right balance, and many are turning to share plans, said Equiniti's online magazine, EQ. Companies are typically considering those free share plans which enable all employees to benefit equally, with a short deferral period or a short period between the award being made and the employee receiving their shares. There are two main ways of delivering free share offers:

- A conditional share award (CSA) is a flexible way of issuing free shares and it may be possible to grant a CSA under existing plan rules, without further shareholder approval, to speed up the process. Share awards can be offered with either a fixed vesting date or as a grant of an option. Granting an option gives employees a period when they can choose to receive their shares, so tax liability will only be triggered *(if at all)* when they exercise the option. Performance metrics and specific terms can be attached to the CSA. However, Equiniti is seeing awards where the only condition is employment of the individuals at the time of vesting.
- The alternative is via the tax-advantaged Share Incentive Plan (SIP) in which participating employees can be awarded free shares (up to the value of £3,600 per tax year) but all on the same terms. However, conditions can refer to an employee's remuneration, length of service, hours or even performance. Companies already offering Partnership shares should be able to use the same plan for a free share grant, though companies must check the trust deed and rules.

The shares are likely to be newly issued/treasury shares, or shares already in an EBT. Market purchased shares are unlikely to be used at this time, as corporations aim to preserve cash.

*Employee share plans and pension contributions have NOT been impacted much by the pandemic as yet, a recent survey of employers claimed. *Impact of the Covid-19 pandemic on pay, bonuses, executive remuneration and employee benefits*, revealed optimism about the long-term future sustainability of organisations, as one quarter of respondents said they believed the pandemic would have a positive/very positive impact on the future sustainability of their business, while less than three percent said they thought it would have a very negative impact in the long run. One in eight respondents have introduced or are planning to introduce financial education for employees in response to the pandemic, while fewer than one in ten are offering or plan to offer additional pension support for pre-retirement employees. Almost half the organisations seemed undecided whether to offer compulsory or voluntary redundancies, or to reduce working hours. Many companies wanted re-skill and redeploy their employees. Pay decisions have been impacted: about 20 percent of organisations have implemented or plan to implement pay cuts and a further third opted not to proceed with scheduled pay rises. Almost a quarter have deferred their annual pay review. The survey received 194 responses including Airbus, John Lewis Partnership, Rolls-Royce, Shell International and Virgin Atlantic.

*Recruitment consultancies last month found that hiring in the UK fell at its fastest rate for 22 years. Large numbers of soon-to-be university graduates have lost the jobs or internships they had lined up before the pandemic struck. Registered unemployment in the UK rose by 857,000 over the month to mid April, implying that many more will be newly registered as jobless in May too.

Centre members reactions: Jay Foley md, Plans EMEA, at **Computershare**, said: "Our business continuity plans enabled us to remain operational, despite restrictions on movement and we were able to react quickly whenever clients decided to change their approach, including making changes to their dividends or altering the timing of awards. We've seen the number of clients that want to revise their share plan strategy reduce as the implications of coronavirus to their own businesses have become

clearer. *A number of clients have communicated to their staff during the crisis to remind them that they can if necessary temporarily stop payroll deductions owing to any hardship they are experiencing.*

"We're working with clients to anticipate developments and ensure that their share plans continue to best serve their organisations and staff. Clients are communicating with their staff on how their participation in their plans may continue or stop depending upon their plan rules and policies.

"Companies are still installing all-employee share plans and discretionary schemes as before. There was a brief 'pause' when the pandemic first hit as companies considered their strategies. However, we're still very busy working on the launches of new plans. *The theme of "fairness" and a focus on both executive and all employee share plans have been key aspects of client discussions.* Globally, we've seen an increase in communication, such as webinars and thought leadership material, as stakeholders work together to share knowledge and discuss how best to react to the pandemic. It's great to see the industry coming together to overcome issues related to Covid-19 and we're pleased to have the chance to share our experiences providing share plans around the world and the insight we've gained as different markets seek to continue excellent share plan provision in these unique circumstances.

"*A lot of discussion has centred on how employee share plans can be a force of good during the crisis, helping clients to achieve fairness in how they treat all employees as well as how they can manage costs and improve cash flow.*

"Our employee share plans businesses are worldwide. Here, our share plans team is currently working from home in line with local government advice. Our systems enable our staff to work remotely in a way that safeguards the security of information while being able to continue business as usual. Such a widespread pandemic inevitably created an element of disruption, much like in other industries," added Jay.

Equiniti announced that a staggered three phased staff return to office-based work would begin from June 1. Under the first phase, about ten percent of staff would return, said Jennifer Rudman. "We are starting with our core operational sites, impacting around ten percent of our workforce. Our operations are performing well, so we're in no rush to make significant changes," she told *newspad.* "In early May, results of a straw poll of more than 900 of our employees showed that 42 percent find working from home works well, with another 43 percent finding it works well, though it would be good to split their time between working from home and at the office. What this pandemic has shown is the effectiveness of flexible working and this is likely to have a long-term impact on how we work." Jennifer added: "To a large extent clients have continued running their all employee share plans, Sharesave and SIP, in the same way, though over the last few months we have seen adjustments being made to the annual task timetables, and some companies which were due to launch plans deferring their invitations for the first time."

Senior **Deloitte** UK partner Richard Houston told staff that partners at the firm would have their pay cut by about a fifth. In a blog, he said there would be no annual salary increases, while bonuses would be reduced and put back to later in the year. "*As part of this package of actions, partner annual earnings are expected to decline by around 20 percent and we have deferred profit distributions,*" he said, adding that the moves were the right thing to do to protect jobs and the business for the foreseeable future. The measures announced align with our commitment that the highest earners in our firm – our partners – should shoulder the greatest proportion of the financial burden," Houston said. The firm offered staff the option of reducing their working hours.

Post lockdown working:

Many companies in aviation, hospitality, live shows and sport are finding it difficult to recover, as discretionary spending has collapsed. Such businesses won't return to pre-pandemic operational levels any time soon. They are being advised to split their staff into teams to keep office numbers down and thus reduce the risk of infection. Facial recognition technology is being installed in some City lobbies, as are on-site testing stations and barriers inside some lifts. Thermal imaging will help receptionists and security personnel identify those visitors or staff running high temperatures. Perspex type glass screens are being installed between receptionists and staff/visitors and some entrance procedures could become entirely robotised. Anyone who tests positive for Covid-19 will be sent home immediately.

Setting an example was luxury carmaker Ferrari at its Modena plant, where all arriving employees step on mats impregnated with gel to disinfect their shoes, reported *The Telegraph.* Temperature scanners check them for fever symptoms. Inside, doors have been adapted to open using elbows, rather than hands. In the works canteen, where sittings are staggered, there are Plexiglass screens between tables and each employee sits in the same place every day, so that contact tracing is much easier if one of them falls ill. There are separate entry and exit points for changing rooms and safe distancing signs everywhere. Almost 100 percent of Ferrari employees agreed to take voluntary blood tests.

US based software firm Salesforce, which rents ten floors in Heron Tower, the City's second tallest building, will encourage its staff to reserve timed

lift space using a special app, in order to stop crowds of employees gathering at the foot of the 46 floor elevators. Social distancing will operate inside the lifts, severely limiting the number of people each lift can carry. 'The notion of putting 8,000 people in a single building may be a thing of the past,' said Joe Staley ceo of Barclays 'There will be a long-term adjustment in how we think about location strategy. *Effectively our bank is now being run by staff working from their kitchens.'*

Canary Wharf calculated that with four people in each lift, its office tower at One Canada Square - can move 56 people every five minutes per lift pod. This equates to almost 2,700 per hour over the four pods of eight lifts used in the 50-storey building. Royal Bank of Scotland (RBS), which owns NatWest, said it would restrict its staff to two people per lift. Staff would be protected by thermal imaging cameras, temperature checks and one-way corridors.

Twitter told its 5,000 employees, including those based in London, that it would be their decision on whether they want to return to the office, once reopened, while Facebook and Google are allowing most employees to work remotely until the end of the year. Facebook's Mark Zuckerberg predicted that half its 45,000 workforce would work from home within a decade. RBS said 50,000 of its staff could work from home for the next four months.

The UK's largest commercial landlord Landsec said that only a small percentage of offices it owned were currently occupied. Many will be left half empty short-term as businesses re-start with a reduced workforce. A survey revealed that employees' productivity while working from home dropped by only a meagre one percent.

However, some employees are NOT happy about prolonged working from home. They were missing the close regular contact they had enjoyed pre pandemic with clients, while others said their domestic arrangements were unsuitable for sustained remote working. All was not blue skies on the technical front either, because some virtual platforms do not facilitate direct inter-communication e.g. between speakers and their audiences, or indeed delegate to delegate, during video-conferencing. Such platforms tend to be *top down* models, permitting viewers to hear and see the speakers, while questions tend to be shoved to the end and not discussed in real time on a fully inter-active basis by all the registrants.

As leaders worldwide weighed the risks of re-opening workplaces in the wake of the pandemic, researchers from the Weizmann Institute in Israel and the London School of Economics suggested: *Start off with a four-day in-office work week, followed by 10 days off.* Why? It typically takes three days for someone infected with Covid-19 to become infectious to others. So, if someone becomes sick during their in-office period, it's probable that they will be off during the days in which they remain contagious. Such a method could help reduce the number of new infections, paving a path to a fuller return to working life.

A Chartered Management Institute survey revealed that 60 percent of its members wanted to split their working week between home and office after the pandemic. Occupational psychologists call it *blended working* and claim it can improve productivity, motivation and job satisfaction. They say blended work suits people who are motivated and organised. It does not suit employees who need more structure and guidance - or those who don't have space at home. A significant percentage of workers staying at home for half of the week would have unpredictable ramifications. There would be more room on buses and trains and traffic would be eased - meaning fewer emissions and cleaner air, and less spending on new roads, said *BBC News*. Car parks in city centres could become green space instead. There would implications for commercial property prices as companies shrink their office space, and for residential property too, because statistics suggest that if people work partly at home, some choose to live even further from the office.

Financial services companies face the nightmare scenario that a member of staff or a visitor to company HQ contracts the virus while in their building. Meanwhile, in the office itself, there will be smaller and fewer staff meetings and office furniture is being re-arranged to encourage social distancing. Employees may boycott those staff canteens which remain open, in favour of sandwiches delivered to desks by socially-distanced vendors, while boozy City lunches will become rare indeed.

Senior financial services staff are worried about the impact of pandemic flying bans on their ability to bond with clients overseas. A key question is whether potential deals thrashed out on *Zoom* will replace a lot of business travel and another is the risk of burn-out as the borders between work and family become blurred for those who work from home. The traditional Monday-Friday working week may be crumbling away.

Centre member Zedra's ceo, Ivo Hemelraad, said: "*I believe that the current focus on employee care will set a precedent for how corporate businesses*

emphasise employee health in years to come. The human culture and core values of a company will become an increasing part of the equation when calculating financial valuations or judging a company's success. I think companies will try to be less dependent on international travel with the rise of digital communication. I think we shall see companies approach networking events and business interactions differently. More companies and employees have discovered that working from home is possible and I expect a lasting effect which will see companies create flexible working spaces and reduce their need for office space. Transacting digitally, instead of old-style wet ink signatures has now accelerated, and there will be no turning back the clock. We are already thinking forward and developing ideas around these emerging trends and new needs of our employees, clients and partners. Modernising our office concepts, staff mobility and processing digitally will be the norm in the future."

*More than one third of FTSE100 companies have cut their dividends this year, upsetting employee shareholders and ex-employees, who rely on the dividend income. Among them was **BT,** which scrapped its dividend for the first time in more than a decade to free up billions to invest in building 5G and next-generation full-fibre broadband across the UK. Its top executives are waiving cash bonuses for the next two years in a bid to appease investors following the company's decision to suspend its dividend. Ceo Philip Jansen and finance director Simon Lowth will defer their combined bonus payments of £2.2m for the next three years. They will turn their full annual bonuses for the current financial year into shares, *Sky News* reported. "This means that the executive directors will not receive any cash bonuses for two consecutive years," wrote Nick Rose, chair of BT's remuneration committee, in a letter to investors. Mr Jansen has said already that he will donate his £1.2m salary to charity for at least six months. The company said it had suspended the £1bn final dividend for last year and the estimated £1.5bn in dividends for the coming financial year to the end of March 2021. When the dividend is re-introduced in 2022 it will be at half the previous annual level, saving another £750m. It reported a 12 percent fall in pre-tax profits to £2.3bn for the last fiscal year, including a £95m charge due to Covid-19, "mainly reflecting increased debtor provisions." Mr Jansen said: "*The full impact will only become clearer as the economic consequences unfold over the next 12 months.*" He said the money saved from cancelling its dividend would form part of a £12bn investment to accelerate the process of getting "gold-standard" full-fibre broadband to 20m UK homes by the mid to late 2020s. "*In order to deal with the potential consequences of Covid-19, allow us to invest in FTTP [full-fibre broadband] and 5G, we have taken the difficult decision to suspend the dividend until 2022 and rebase thereafter,"* added Mr Jensen. Cash-strapped tobacco giant Imperial Brands cut its dividend by one third. Companies have either scrapped or reduced dividends to the value of more than £30bn so far this year.

*Debt laden companies in tottering sectors, such as the airlines, may be forced to merge to survive, requiring government financial aid, Sir Philip Hampton, ex chairman at GlaxoSmithKline, predicted, as it emerged that Jaguar Land Rover was in talks with the government over a possible £1bn rescue loan. Sir Adrian Montague, chairman of Aviva and of the TheCityUK's taskforce, said that the ideal solution would be to take debt off company books and change it into equity. The government was ready to invest funds into corporate casualties, in extremis, in return for equity stakes and investment bankers were being lined to help, he said. This could open the way to more employee share ownership in such businesses, perhaps via BOGOF offers to employees: *Buy one share and get one free.*

*Meanwhile, the government's **Coronavirus Jobs Retention Scheme (CJRS)** was extended for a second time until September 30, with the taxpayer job subsidy level maintained at 80 percent. However, chancellor Rishi Sunack announced that, from August, he would expect employers to shoulder part of the CJRS financial burden, which is costing taxpayers an estimated £14bn per month. The chancellor announced that he would taper back the CJRS job subsidy from August 1, from when employers will have to pay furloughed employees' NICs and pension enrolment contributions, but for that month the subsidy will remain at 80 percent of wages up to a maximum of £2500 per month; From September 1, employers will pay, NICs, pension contributions, ***plus*** ten percent of a furloughed employee's wages, while the state will pay 70 percent, up to a max £2,190 per month and...

From October 1, employers will pay the above, plus 20 percent of a furloughed employee's, while the state pays 60 percent, up to a max £1875 per month. The scheme is scheduled to end on October 31.

"The extension of the furlough scheme may make political sense" said Professor Len Shackleton, editorial and research fellow at the Institute of Economic Affairs, but it may simply delay the inevitable for businesses and employees. Writing for *The Telegraph*, Len argued that we cannot *"flick a switch and go back to the same level and pattern of employment as before. Many jobs which existed*

before lockdown will have gone for good: even in normal times over a million jobs are lost in each six -month period (though usually replaced by new ones elsewhere in the economy).

"The current furlough scheme is masking this, holding out the false hope that all the jobs which people had will be there when furlough ends. The longer businesses are dependent on the furlough scheme, and unable to begin reorganising staff and adjusting their business models, the less likely it is that people will have jobs to return to once the lockdown ends. It will delay individuals' plans to seek other jobs where this is clearly going to be necessary," he added.

The CJRS was criticised by Centre member **Bird & Bird** over technical detail: "*Unfortunately, the most recent government guidance and the Treasury Direction appear to conflict in places, and the meaning of some parts of the Direction is difficult to interpret. This means that there remains a high degree of uncertainty over some aspects of the CJRS, including the eligibility of employees who are entitled to SSP, how the scheme works for those who have left the business and are re-hired, and whether express agreement is needed from an employee in order to place them on furlough*," said the law firm. Employers can only claim for furloughed employees that were on their PAYE payroll on or before March 19 and who were notified to HMRC (on an RTI submission) on or before that date. For employers who pay employees towards the end of a calendar month, the RTI condition may mean that individuals recruited in March will not be eligible for the CJRS. The later addition of the requirement that employees must have been included on an RTI submission means that some individuals employed as of February 28, now cannot be claimed for.

"The most recent guidance places additional emphasis on the reporting of fraudulent claims and HMRC established an online portal for employees and the public to report suspected CJRS fraud. HMRC retains the right to withhold or demand repayment of CJRS grants where a claim is found to be based on dishonest or inaccurate information. *Areas of concern include employers not passing CJRS grants on to employees, asking employees to work while furloughed, and/or backdating claims to include periods when the employee was in fact working. In view of this, it will be very important for employers to keep clear records concerning furlough, including the rationale for their decision to furlough employees, their communications with employees (including evidence of their agreement to be placed on furlough), and the calculation of their claims,"* warned Bird & Bird.

*Large companies who borrow from the UK taxpayer will be banned from paying bonuses and dividends, according to the Treasury and the Bank of England. The limit on the **Coronavirus Large Business Interruption Loan Scheme (CLBILS)** has been lifted from £50m to £200m. Firms who want more than £50m will face restrictions until the loan is repaid. The Bank of England will implement the restrictions on the scheme it runs as well as seeking a letter from firms who wish to borrow for more than a year. It said big companies who require loans from the **Bank's Covid Corporate Financing Facility (CCFF)** for a term beyond May 19 2021 "will be expected to provide a letter addressed to HM Treasury that commits to showing restraint on the payment of dividends and other capital distributions and on senior pay". The Bank said: "These commitments are intended to create incentives for, and promote the ability of, businesses to repay their borrowings." As well as limiting dividends and cash bonuses to senior management - unless they were announced before applying for the government loan - companies will be prohibited from share buy-backs.

The Treasury and the Bank of England announced that from June 4 they would publish a weekly list of the companies who had accessed the CBILS Facility and how much they had borrowed. Companies will be able to borrow 25 percent of their turnover to a limit of £200m. By mid-May, 86 loans worth £590m had been approved under CBILS.

*More than 580,000 small SMEs applied for emergency loans of up to £50,000 within the first 16 days after the Treasury's new **Bounce Back Loan Scheme** opened for business. Of these, about 120,000 had either been declined or were still waiting for approval. However, more than £4bn had been paid out already to 464,000 companies. *Bounce Back* loans are aimed at very small SMEs with an annual turnover of less than £200,000. The loans are awarded by banks at the lowest interest rates and are 100 percent guaranteed by the taxpayer. About 43 percent of borrowers told the Business Banking Resolution Service that they either could not, or would not, repay the loans.

Chancellor Rishi Sunak launched *Bounce Back* loans (*perhaps to be relabelled 'Bounced Loans'?)* after his **Coronavirus Business Interruption Loan Scheme (CBILS)** – available to companies with turnover under £45m – attracted under 53,000 applications, as banks claimed it was too bureaucratic and left them holding 20 percent of the risk on each loan.

Britain's £500m Future Fund, which allows start-ups to seek convertible loans of up to £5m, pulled in £453m worth of applications on its first day, double the amount the Treasury had expected.

*There was a faint warning for the self-employed in Rishi Sunak's remark as to the fairness in the differential in tax between PAYE and the self-employed. He may be expecting those who are being bailed out to pay more tax later on. The

controversial new off-payroll rules (IR35), due to have come in April 2020, are already delayed for 12 months, but this could be a temporary reprieve.

*An internal Treasury policy report confirmed that ministers and top civil servants were preparing the ground for Cabinet discussions on whether to impose substantial tax rises, sooner, rather than later. This sparked off a battle within senior Tory ranks as to whether it would be better, short term, to borrow more money (*and treat it like a war loan to be repaid much later*) , or bill taxpayers – in the form of either rises in Income Tax, NICs, Corporation Tax and/or VAT rates. Potential cutbacks in annual state pension increases (governed by the Triple Lock) and hikes in property taxation were being looked at too, though the latter would take longer to change. After all, the Treasury argues, people are going to have to pay for keeping 8.4m employees off the dole via the furlough scheme, one way or another.

EVENTS

Jersey 2020 re-scheduled to September 25

The Centre's Jersey share schemes and trustees seminar, held in partnership with the Society of Trust & Estate Practitioners (STEP-Jersey branch), has been rescheduled for Friday September 25 with the proviso that travel and social distancing restrictions are eased by the autumn. Given the hiatus in Brexit negotiations, new developments in corporate governance, the global reach of trustees and the growth in employee ownership trusts, it has never been more timely for those interested in Eso schemes and trusteeship to attend this annual seminar. The programme includes updates on the loan charge, case law, and Esops along with "*A day in the life of a tax inspector*" - looking at the knock-on effect of the pandemic for those working at HMRC. The seminar will conclude with a lunch for delegates and speakers. Experts include: Katherine Neal, Ogier; Graham Muir, CMS; David Pett, Temple Tax Chambers; David Craddock, David Craddock Consultancy Services and Paul Malin, Haines Watts. The seminar will be chaired by Malcolm Hurlston CBE. Invited guests of honour are Mark Hoban, the new chairman of the Jersey Financial Services Commission, and Rt Hon Mark Field, a strong advocate of the Crown Dependencies, who has already accepted.

Prices: Esop Centre/STEP members: £375, Non-members: £480. To reserve your place, email: events@esopcentre.com or call the Centre on +44 (0) 20 7562 0586.

Share plans symposium – October 15

The Centre's fourth **British Isles share plans symposium**, co-sponsored by **Ocorian,** global provider of bespoke administration and fiduciary services, will now take place in central London on **Thursday October 15**. You can download the programme from www.esopcentre.com/event/british-isles-share-schemes-symposium-2020/. Framed certificates will be handed over to the winning companies of the Centre's 2019 Awards at a short informal reception immediately after this event. Representatives from share plan issuer companies can attend FREE OF CHARGE, with preference given to Centre members and conference newcomers. Enquiries please to Fred Hackworth: fred_hackworth@zyen.com.

Esop Centre webinar series

Senior Centre member **David Craddock**, founder and director of his eponymously named consultancy, gave a well-attended webinar on the tax-advantaged share options based Enterprise Management Incentive (EMI) for the Esop Centre's new webinar series. David used five selected client case studies to demonstrate how eligible SMEs could use the EMI scheme profitably in different circumstances. The event was hosted and chaired by Alderman Professor Michael Mainelli, director of the Esop Centre. David told his audience that EMI was the "*most tax efficient share option scheme introduced anywhere in the world.*" His first case study was a software technology marketing company he had valued at £300,000, which aimed to be worth between £7m–£10m within five years. He established a nominal option value to maximise employee opportunity and the EMI's exit conditions included an MBO, a takeover, or a flotation and a private share sale – in other words, an exit-only EMI. His second example was an £18m passenger and freight transport company, which was quoted on AIM and which already had both a Sharesave and a SIP operating for its employees. David helped it hook up an executive LTIP with an EMI, using nil cost options and an employee benefit share trust. His third case concerned succession planning and diversification in a £5m privately held software testing company, which had a strong belief in employee share ownership. Employees were used to buying shares with their bonuses, though their market value options could not be exercised within three years. Its share trust operated a surrogate market in share dealing. Mr Craddock's fourth case concerned an engineering company which used an EMI as part of succession planning for an MBO. The directors identified their successors from among 220 employees. The existing directors wanted to stay in their company, but at the same time realise value from their holdings. The company established an employee share trust and the directors sold 24 percent of the equity. It then granted EMI options to key managers with top-up unapproved share options too. The new management would have 40 percent of the company within five years and 75 percent within seven years. Finally David gave his fifth client example: a £10m management consultancy with 140 employees, by using growth

shares in conjunction with an EMI. The basis was that if the five shareholders sold the company then they would get the first £10m realised from the sale. He reclassified the ordinary shares as preference shares and created new ords as growth shares. Under this arrangement, 80 percent of the value would go to the shareholders and 20 percent to the employee shareholders. The icing on the cake was that David managed in this case to combine the EMI with Entrepreneurs Relief so that the five major shareholders were taxed at the lower rate of CGT – a huge saving compared to what they would have had to pay under the Income Tax and NICs regimes. A recording of the webinar can be viewed at https://www.youtube.com/watch?v=De7Vq4oqRVE.

Coming up

Join us at **16:00** BST **Friday June 4** when Centre member YBS Share Plans' Darren Smith will discuss the **burning Eso questions of the day** with share plan expert guests on his virtual sofa. Guests include Ross Crick, manager in the wealth structuring team at Jersey Trust company VG, lawyer Emma Parker, managing associate at Tapestry Compliance and Bryony Padgett-Jones share plan account manager at YBS Share Plans. Details at https://fsclub.zyen.com/events/webinars.

Keep an eye on your inbox for news of **further webinars** including: *How to ensure all-employee share plans remain relevant; Awarding shares to employees in a Covid-19 world - how to make good use of the government's Share Incentive Plan (SIP); Adapting to business life during the pandemic - client Q&A; Use of all-employee plans as a tool for engagement, especially during the current situation; The employee share trust - establishing a dynamic market for your employee share schemes; Share valuation - the wisdom on price-setting for your employee share schemes; The case for employee share ownership - the heart of the matter revealed; Employment-related securities - the complexity unravelled into practical application; and Employee share schemes - innovative communication strategies guaranteed to increase employee take-up.*

MOVERS AND SHAKERS

Sanne acquires Inbhear

Centre member **Sanne** has completed its acquisition of Inbhear Fund Service and Inbhear Management Services. Founded in 2004, Inbhear partners managers who have a long-term investment horizon. Like Sanne, it has an institutional client base and is well known for providing high levels of service. This deal enables

Join the Esop Centre

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

Membership benefits in full:

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

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

⇒ Interact with Esop practitioner experts and company share plan managers

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

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

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

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

⇒ Access organisational and event sponsorship opportunities.

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

⇒ Discounted access to further training from the Esop Institute.

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

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

Sanne to strengthen its expertise in Dublin and adds new strategic locations to its global office network. Martin Schnaier, ceo of Sanne Group, said: "*The acquisition of Inbhear adds to Sanne's growing pipeline, representing continued momentum in expanding and diversifying our client service proposition and advancing our vision of becoming one of the world's leading providers of alternative asset and corporate administration services.*" Sanne, a global provider of alternative asset and corporate services, was founded in 1988. Now listed in the FTSE 250, it employs more than 1,800 people worldwide and administers structures and funds with more than £250 bn in assets.

FEEDBACK

A new column giving members the chance to air their Eso ideas. The views expressed here are not necessarily those of the Esop Centre.

Graeme Nuttall OBE, partner in Fieldfisher's tax structuring department and its employee and mutual ownership team, said: "I support the idea of Employee Ownership Trusts in listed companies. By this I mean I want to see employee trusts in listed companies with shares held permanently on behalf of all employees. The dividends that would otherwise be received are waived and paid out as bonuses to all employees. Further, the trustee directors would be elected or selected by employees and not by the main board. Shares held in this way would come from the usual ten percent dilution limit allowed for share plans. Investment protection guidelines need changing to permit this sort of trust rather than only allowing a "warehouse" trust. This is such a novel way of thinking about share plans in listed companies that I can see at some point it may be necessary to nudge the creation of permanent employee trust shareholdings in listed companies through a right to request.

Just as a statutory nudge wasn't needed for private companies, there are alternative ways to try first, in relation to listed companies, starting with changing the Investment Association Principles of Remuneration to permit permanent employee trust shareholdings and publishing guidance on how the governance, accounting, financing and tax aspects of such trusts would work. I expect a tax change will be needed to make contributions tax deductible before this idea can compete successfully with direct employee share ownership in listed companies.

WHITE & CASE

UK CORNER

Reminder: share plan awards filing deadline

In the absence of an announcement from HMRC, as this edition went to Press, about any extension in filing, the current deadline for electronically submitting ERS annual returns for the fiscal year 2019-20 remained on or before ***July 6*** 2020.

Lloyds in the Sin Bin over executive bonus plan

Lloyds Banking Group shareholders rebelled against the lender's pay policy for senior executives, with more than a third of agm votes cast against its bonus plan. The reverse came after the shareholder advisory group, ISS, recommended that investors block Lloyds' executive pay policy over concerns about a switch to more certain long-term bonuses. The policy passed with only 64 percent support from the votes cast. Lloyds is switching to a restricted share incentive scheme for senior executives after mounting criticism among shareholder groups of uncapped long-term incentive plans (LTIPs) Under the new proposals, ceo Antonio Horta-Osório can earn a maximum annual overall pay package of £6.3m, down from £8.3m previously, ISS calculated. But the proxy agency questioned whether the reduction was sufficient, given the higher probability of receiving the bonuses.

Lloyds said it would consult investors further after some expressed reservations, including calls for plan simplification, but was determined to implement the new policy. However, its pay policy will be placed immediately in the Investment Association's *Sin Bin* and, accordingly, the bank will be required to state openly what steps it intends to meet shareholder criticisms. Lloyds said the reduction was in line with industry standards and that the bonuses were still subject to tests. Since last year's investor meeting, Lloyds has cut pension cash contributions for top executives and raised contributions for all other staff after stinging criticism from politicians. Horta-Osório and other executives have waived their bonuses for this year due to the pandemic. In a statement during the webcast investor meeting, Horta-Osório said supporting customers hit financially by the pandemic was the "right thing to do", but this would

come at a financial cost to the bank. (a link to the IA's Investment Public Register - referred to in *newspad* as the '**sin bin' -** is provided at www.esopcentre.com/news/newspad/).

It's raining bonuses at Tesco

Departing Tesco ceo, Dave Lewis, received a £6.42m reward package, the biggest annual haul for any executive at the supermarket since the departure of Sir Terry Leahy almost a decade ago. Lewis, who is leaving in September, witnessed his total reward rise by more than a third last year, thanks to a leap in annual and long-term bonus payouts. He won a £2.4m annual cash bonus and another £2.4m long term share bonus on top of £1.6m in basic salary and benefits. Lewis's basic salary alone is 355 times that of the lowest paid average employee. His long term share bonus was boosted controversially by £666,000, based on Tesco's share performance against rival retailers. That share price measurement moved much in his favour after Tesco's remuneration committee removed the online grocer Ocado from the list of rivals. A note in Tesco's accounts showed that if Ocado's stellar share price performance had been included, Lewis and Tesco's fd, Alan Stewart, would have received a reduction of more than £1m in long-term bonuses between them. The bonuses are the largest Tesco has paid to its ceo since the departure of Leahy who received a £7.1m package in his last year at the business. Lewis will be succeeded by Boots executive Ken Murphy. As a *good leaver*, Lewis will receive a portion of his annual bonus for the current financial year too, which could exceed £1.8m. He will be entitled to a proportion of share bonuses, partly dependent on performance of the company, which will vest over the next few years. Tesco was forced to defend paying a £635m dividend to shareholders while accepting a similar-sized tax break from the government's emergency Covid-19 support package. The Labour peer Andrew Adonis said it was "*absolutely wrong*" for Tesco to accept a business rates holiday worth £585m and said the retailer should "pay it back," as it could afford to pay a big dividend to shareholders. The company's annual report revealed that Tesco paid a £10.7m lump sum payment to the former ceo, Philip Clarke, in March in a settlement of due pension contributions. Clarke, who stepped down in September 2014, left Tesco in January 2015 shortly after the discovery of an accounting black hole and a period of poor performance.

TRAVERS SMITH

Temporary agm law in focus

The government's business (BEIS) department and the FRC issued an update confirming that the Bill containing Covid-19 agm measures was being introduced in the Commons with a second reading on or around June 2. If passed, it can expect to receive Royal Assent later this month. The legislation will be temporary, backdated to March 26 and expiring on September 30, giving companies who have postponed their agms until the end of September to re-convene. The legislation will be kept under review and extended if needed. The temporary measures will be similar to previously issued FCA and ICSA guidance allowing companies to: hold 'closed meetings'; form their quorum in a non face-to-face manner, e.g. by phone or virtually; communicate electronically with shareholders and not have to state the venue on the notice. FTSE 100 giants including GlaxoSmithKline and Barclays were holding virtual agms, using video conferencing.

HMRC study into tax avoiders

The attitude of tax avoidance scheme users is influenced by the credibility of the scheme promoters and of their back-up QCs, an HMRC research study has shown. Users regard tax avoidance schemes as both commonplace and socially acceptable, reported tax expert Paul Malin, of Haines Watts, a regular speaker at the Centre's Channel Islands seminars. The subjects of 20 in-depth interviews with tax avoidance scheme users, who had settled their affairs with HMRC, confirmed that they believed that such schemes were necessary because they were paying away half their income in tax and PAYE – and that signing up would deliver a gain. Users were divided into those unaware that their scheme was illegal, those who believed it was technically legal and fair and those who knew it was tax avoidance, yet who were ready to either negotiate with HMRC or contest it in the courts. The survey results reignited concerns about the role of certain QCs who acted on behalf of the scheme promoters, echoing the sentiment of the promoter in terms of the user's case being strong and worth contesting. One scheme user said: *"I kept it going because the QC was confident of winning…he had no doubts. There was no equivocation at all."*

HMRC itself came under scrutiny over how it handled the settlement process, said Mr Malin. "Scheme users were often speaking to a number of different agents within HMRC, not all of whom

were up to speed with the user's case. Overall, the greatest variation in experience was in response to letters received from HMRC, an often cited influence on critical customer experience amongst a mix of user types who had paid after clarification or discussion with HMRC. Users discussed receiving a range of letters from HMRC, often originating from different names/departments and not always clear in terms of the content," he added.

Freeze LTIPs and reduce quantum, urges IA.

Remuneration committees should be prepared to put executive long term incentive plans (LTIPs) on hold and to eliminate any 'windfall gains' at vesting, for the duration of the pandemic, advised The Investment Association (IA). Companies should think seriously about whether it would be prudent to postpone new LTIP awards until the pandemic is fully under control. Even if bonuses had already been approved, remuneration committees (rem-comms) should consider scrapping or reducing them, it said. For failure to adjust executive incentive packages to reflect the effects of Covid-19 on employees, other shareholders and stakeholders, could have a severe impact on corporate reputations, warned the IA, which speaks for trillions worth of investor institutional funds. It was responding to requests from remcoms of UK listed companies and their advisers to provide shareholder expectations on how committees should reflect on the impact of Covid-19 on executive reward.

"These expectations are evolving as the ongoing impact of the pandemic becomes clearer and we expect that we will update this guidance as the situation develops or other issues arise," said Centre member **Linklaters,** which cited the IA's *Principles of Remuneration* as continuing to provide a useful guide to shareholder expectations and good practice. Shareholders recognised that remcoms would have to sensitively balance the need to incentivise executive performance at a time where management teams were being asked to show significant leadership and resilience and ensure the executive experience was commensurate with that of shareholders, employees and other stakeholders.

*IA members do *not* expect rem-comms to adjust performance conditions for annual bonuses or in-flight LTIP awards to account for the impact of Covid-19. Where the remcom considers that performance of the company and shareholder experience is not commensurate with the executive remuneration outcomes, it should use its discretion to ensure a good link between pay and performance. In such cases remcoms should engage with their shareholders and disclose the reasons for the use of such discretion.

*Most members said that for December year-end

companies which have already made grants, if the share price fall was solely related to Covid-19 market movements then they would accept that there did not need to be an adjustment to the grant size. Nonetheless, it was important for the remcoms to confirm that they would look at the general market and share price response over the performance period to ensure that windfall gains would not be received on vesting. Shareholders will expect the committee to use its discretion to reduce vesting outcomes where windfall gains have been received. Remcoms should set out in their next remuneration report the approach they will take and factors they will consider when judging if there has been a windfall gain from the LTIP grant. Shareholders would expect any longer-term individual share price underperformance to be accounted for. If, for instance, the share price was down 30 percent in the year prior to the Covid-19 market reaction, an appropriate scaling back should be applied.

*Institutional shareholders feel that it is important for remcoms to examine the individual circumstances of the company and the impact of Covid-19 on it, said the IA. Companies and shareholders are uneasy over the ability to set meaningful three-year targets at the present time and question the appropriate grant size, given the share price reaction to Covid-19. In particular, committees should be considering if it was still appropriate to make LTIP grants at this time and whether, given the situation, it might be more appropriate to *postpone* the current LTIP grant.

*Members believe that there are several choices depending on the circumstances of the company:

1) grant on the normal timeline setting performance conditions and grant size at the current time. 2) grant on the normal timeline setting the grant size now but committing to set performance conditions within six months. 3) delaying the grant to allow the committee to assess more fully the appropriate performance conditions and grant size. In such circumstances remcoms should aim to make the grant within six months of the normal grant date.

The committee should explain the approach they have taken to their shareholders. Whichever approach is taken, they should be clear about the discretionary powers available on vesting and commit to using them to ensure that outcomes will

reflect company and executive performance, as well as the experience of shareholders and stakeholders including employees. *Shareholders will expect the committee to use its discretion to reduce vesting outcomes where windfall gains have been received. Committees will have to adopt an approach that is appropriate to the company and the specific impacts of Covid-19 on the business.* Whichever approach is adopted, committees should be careful not to isolate executives from the impact of Covid-19 in a manner inconsistent with the approach taken to the general workforce. The issues on performance conditions and grant size are outlined below, said the IA.

Quantum: Rem-comms need to be pro-active in determining the appropriate LTIP award size in the current market environment, given sustained share price falls. Making awards at maximum potential in cases where share prices have fallen substantially is to be discouraged. Committees should consider reducing LTIP grants to reflect the shareholder experience.

Performance conditions: remcoms will have to consider if the performance conditions for future LTIP grants are still appropriate in the current market environment. Shareholders want performance conditions to be stretching. Committees may wish to make an LTIP grant at the usual time while delaying setting performance conditions for a reasonable period of time (up to six months), until the impact of Covid-19 on the business is clearer. If committees delay LTIP grants until further clarity is established, shareholders would still expect best practice to be a performance period of three years following grant. However, where this is not possible, committees may shorten the performance period by up to six months, contingent on the explanation provided by the committee and adequate post-vesting holding provisions being in place. Where the performance period is shortened, grant sizes should be similarly reduced.

*Shareholders expect executive remuneration to be aligned with the experience of the company, its employees and its other stakeholders. Where a company has sought to raise additional capital from shareholders, or has required government support such as furloughing employees, shareholders would expect this to be reflected in the executives' remuneration outcomes. The Principles of Remuneration are clear that *executive remuneration should be reflective of the pay and conditions in the wider workforce*. Covid-19 and the measures taken to avert its wider spread, will result in many employees being furloughed or asked to take pay-cuts. *Remcoms and management teams should be even more mindful of the wider employee context through this period*. Failure to do so may have significant reputational ramifications. Members have noted those companies who have already proposed temporary salary reductions for executives or decisions to freeze the variable pay, shareholders will support companies that do so and recognise that *if they are asking employees to take temporary reductions such an approach should be followed by the executives too*.

*Many companies will have spent significant time consulting their shareholders on the new remuneration policies which will be put to shareholders during this agm season. Institutional shareholders do not believe that these companies should be re-writing their remuneration policies at this time, but if companies are seeking to propose variable pay increases in the current year, the remcom should carefully consider if such an increase is appropriate in 2020. For those companies yet to consult on a new remuneration policy, it may not be appropriate to bring forward such policies with substantial changes if the company is significantly impacted by Covid-19. For these companies, it may be better to wait until there is greater clarity on the future market environment before proposing significant changes to their remuneration policies. Companies who have received government support to help them through the Covid pandemic should cut executive pay and consider clawing back bonuses from senior executives, said the IA. Members of the Investment Association, who include BlackRock, Legal & General Investment Management and Vanguard as well as pension funds, manage more than £7tn in assets, giving them weight in any pay award vote.

Departure bill at Royal Mail

Struggling postal group Royal Mail (RM) cancelled its dividend distribution as it tried to shore up its balance sheet in the face of the Covid-19 crisis – hitting hundreds of thousands of shareholders, including postal employees, most of whom are employee shareholders. Days later, Swiss–based ceo Rico Back, who was earning up to £2.7m a year, quit his post with immediate effect. Back is on gardening leave until August 15 and is to receive a £1m pay-off, comprising his salary and benefits during that period and nine monthly payments totalling £480,000 in lieu of working his notice period. However, he will *not* receive a cash bonus or share awards for 2019-20 or 2020-21, worth around £2.5m. RM, which gave no explanation for Back's departure, agreed to pay £50,000 towards his legal fees and £25,000 towards "outplacement support." The German-born executive was criticised for remaining in Switzerland, his country of residence, during the pandemic. Royal Mail said Back was following government advice to work from home. He was replaced in the interim by the company's chairman, Keith Williams, a former ceo of BA.

Two years ago, the share price of privatised RM

stood at a lofty **631p** and it seemed to be the poster boy for all-employee share ownership. By early May this year, however, its share price had slumped to less than half the privatisation float price of 330p. However, news of Back's departure lifted the share price up by more than eight percent to **176p**. RM warned that it might not even make a profit this year, while the CWU, the main posties' union, was still planning strike action.

About 150,000 postal employees received *free* shares in a five-year Share Incentive Plan when RM was privatised in 2013. The entire board missed out on any bonus in the previous year after a lacklustre period for the postal service. Neither Mr Back, who faced criticism over a ***£5.8m*** *golden hello* when he joined, nor former ceo Moya Greene secured a payout following poor results. Letter volumes fell seven percent. RM promised to listen more closely to shareholders after investors rejected last year's pay report by 71 percent over accusations of excessive reward. Since then, the company said it would change the way its bonus schemes – an annual one and an LTIP – operate, with the maximum bonus falling from 200 percent of an executive's yearly pay to 150 percent. Orna Ni-Chionna, chair of the pay committee, who was blamed for allowing the £5.8m payment to Mr Back and a near £1m *golden goodbye* to Ms Greene, has left. This year, the LTIP set up in 2016 will not pay out.

Hospital chiefs' bonuses axed and pay capped

The government capped pay for private hospital bosses and banned bonuses while their facilities are run by the NHS to help during the Covid-19 crisis, in an example of demanding executive pay restraint in return for emergency state support.

Under a special deal, the government took over 8,000 private hospital beds, 20,000 nurses and 700 doctors "at cost" for at least 14 weeks, in what was described as a de facto bail-out for the companies. The temporary takeover was designed to provide extra healthcare facilities during a time of national crisis, but provided financial relief to the private hospital companies and their shareholders. The sector faced a huge fall in revenues during lockdown, as non-emergency treatments were cancelled and foreign patients – who account for a significant proportion of private hospital income – were prevented from travelling to the UK. The 26 companies who signed the NHS deal cannot claim back costs for executive salaries higher than the pay of NHS trust bosses for the period that the NHS remains in control of their facilities. The NHS will not cover dividend payments to shareholders during the takeover period. The median annual pay of the ceo of a large acute NHS trust should be about £225,000, according to NHS guidance. Simon Stevens, the ceo of NHS England, was entitled to a salary of up to £240,000 for the 2018-19 financial year. Although the median annual salary of a trust ceo is almost eight times higher than the UK average, maintaining the pay cap over a 12-month period would represent a significant reduction for many private healthcare chiefs whose pay deals are significantly larger than their public-sector counterparts. Once the initial 14-week period of the deal expires, it can be extended on a weekly basis.

Justin Ash, ceo of Spire Healthcare, received £1m in total pay for 2019. Spire said Ash and the chairman and finance director had each agreed a 20 percent pay cut for April, May and June. The highest-paid director of the UK subsidiary of private hospital owner Ramsay subsidiary received £1.1m in the year to June 2018. US-listed hospitals giant HCA Healthcare cut pay for senior executives by 30 percent, while the highest-paid director of the UK subsidiary was paid £711,000 in 2018. However, the contracts are understood not to contain provisions about executive reward or bonuses beyond the period of NHS control, raising the possibility that some private hospital chiefs could still receive large rewards during 2020, even though the companies may have struggled to hit targets or even survive without emergency help from the government or investors.

Top executives hold onto their bonuses

Almost two out of five leading companies have cut executive *pay* to reduce costs during the shutdown but only one in seven have slashed bonuses and long -term incentive payments, a new study claimed. The left-leaning **High Pay Centre** said at least 18 percent of FTSE 100 companies and 23 percent of FTSE 250 companies were intending to take advantage of the Covid-19 Job Retention Scheme, so their staff will be placed on furlough with 80 percent of the wage costs covered by the government. Some companies made it clear that they will top up wages to their full value, said the think tank. Its report said that in the past five years these companies have spent a combined total of £321m on ceo pay, paid out £26bn in dividends and made £42bn in profits. Around 37 percent of FTSE 100 companies have cut executive pay during the crisis but only 13 percent have cut the bonuses and long-term incentive payments that comprise the biggest component of executive pay awards. Luke Hildyard, director of the High Pay Centre, said: "The CJRS is a vital progressive measure to protect people's jobs and incomes at this critical time, but it's important to understand that it is a subsidy for businesses, as well as for workers. The companies that are effectively taking public money to sustain themselves through the shutdown will be under particular pressure to achieve a fairer balance between rewards for executives, investors and their

wider workforce in future. Hopefully the sense of solidarity forged in the crisis will raise ambitions for the social and environmental contribution of all businesses."

There are currently no limits on executive pay attached to the government's various support schemes, but this will change if companies are forced to apply in extremis for life-support state loans. Investors are concerned large payments could prove controversial at a time of unprecedented crisis. However, there are concerns that some companies may carry on with pre-crisis pay policies. The Institute of Directors (IoD) backed the call for companies to consider any payouts. "Nothing is normal for companies at the moment, and that should include remuneration," said Edwin Morgan, the IoD's director of policy. "*Ideally, pay policy during a crisis would be designed to encourage the whole organisation to pull together. State support is there to keep companies alive while the economy is frozen, and boards should think very carefully about how they reward executives, particularly when other stakeholders might be losing out.*"

Bonuses linked to climate objectives

National Express's new climate commitments link senior executive pay to de-carbonisation progress for the first time. From now on, 25 percent of senior executives LTIP packages will be linked to delivery against the 2030 bus and 2035 coach aims. Other firms linking staff pay to de-carbonisation include Shell, whose 150 most senior executives had their monthly pay packets tied to progress against its three-year emissions reduction targets in 2019. Repsol and BP have made similar moves, while Britvic, Thames Water and Philips have plumped for loans with sustainability-linked rates. The trend towards linking staff pay to environmental progress has experienced an up-tick in recent months - buoyed by a new wave of climate activism, scientific research and stricter green policies. However, recent research found that just six percent of UK ceos have financial incentives and bonuses tied to environmental strategies and performance across the business practice. The same study, concluded in December 2019, found that 90 percent of UK businesses had no financial incentives to focus on environmental sustainability at all.

EOT news: Electric heating distributor **EHC Energy** embraced employee ownership after its directors sold a majority stake into a staff share scheme. The Blantyre firm's directors Bill Walters and David Stevenson had been transferring day-to-day running of the business to managers and other staff over the last 18 months. EHC, which installs energy-efficient heating systems for social and private landlords across the UK and supplies plumbing and electrical wholesalers, reported turnover of £3.75m last year. Walters said: "The directors of EHC have actively been looking for a suitable exit strategy that would provide a solution which safeguards all parties concerned. When we discussed the options with the key staff it was agreed the employee share scheme would deliver the best long-term solution to meet our future aspirations. We are delighted that the transaction is now complete and provides stability across the company in these challenging times.''

One month deadline in Post Brexit talks

As this issue went to Press, Boris Johnson's government had just one month left in which to apply for an extension to the post Brexit transition period, which otherwise will expire on December 31. Talks between the UK and EU over a potential post-Brexit trade deal were almost deadlocked, with both sides admitting that *very little progress* had been made in the third round of the talks, which ended a week ago. Negotiators have been hampered anyway by the restricted attendance meeting rules imposed during the Covid-19 pandemic. Video link was a headache for the EU with its 27 member states, all anxious to chip in with their requests regarding the shape and content of any future post transition deal. The UK has to decide whether to press the ejector button and plan for life under WTO rules after the transition period expires. BoJo's government said it would not agree to an extension, even after the EU suggested one. The UK's chief negotiator warned Michel Barnier that he must drop his alleged "ideological approach" as the final round of talks neared. The comments from David Frost came as both sides offered a gloomy prognosis for the negotiations on trade, security and fisheries, with little sign of the teams finding common ground. BBC Europe editor Katya Adler said the EU accused the UK of concentrating on its priorities while going slow on issues more important to the 27 -member bloc. She added that the UK wanted to first settle a core trade deal alongside deals on aviation and energy, while the EU was keen to focus on fishing quotas and competition rules. Michel Barnier, the EU's chief negotiator, said that the talks had been "very disappointing" adding that he was not optimistic about the outcome. A key flashpoint remained the British insistence that it would not tie itself to common so-called level playing conditions on environmental, social and labour standards. Barnier accused the UK of trying to pick and choose parts of the EU single market, dismissing the government's claims that it is seeking a typical free-trade agreement: *"Every time we meet they say they would be happy to have a Canada-style agreement, but at the same time ... they ask for far more from us*

than is available under the Canadian model." Barnier cited the UK's desire for "virtually full freedom of movement" for short visits, maintenance of "existing arrangements" on electricity interconnection, as well as "*broad and widespread" recognition of professional qualifications to enable British lawyers, accountants and auditors to work in the EU.* He told a media conference that there would be no mutual recognition of rules. "That means there will be no passporting of financial services. Barnier said the *EU would consider whether there would be equivalence for financial services and an adequacy ruling for data protection (the elephant in the room)*. The Withdrawal Agreement assumed that EU-UK data flows would be maintained through an adequacy decision. However, there is a risk of disruption to such flows, should the UK's data collection practices be found *incompatible* with EU data protection rules, or should the UK wish to secure data flows through some novel mechanism. *Businesses may need to install alternative mechanisms to transfer data into the UK.* The General Data Protection Regulation (GDPR) will apply from the end of this year, raising questions around the application of both the UK and EU regimes. From January 2021, the UK will no longer fall under the EU's one-stop shop for merger clearance, and many transactions are likely to be subject to parallel review by EU and UK authorities. Brussels would reject a UK demand for a deal guaranteeing City long-term access to the EU market, he added.

The European Central Bank (ECB) said that in banking supervision, it had processed 25 licensing procedures for banks relocating to the euro area from the UK and had assessed the Brexit plans of 42 euro area banks pledged to maintain their UK branches post the transition period. Meanwhile, sterling continued to struggle in the foreign exchange markets.

COMPANIES

Air France-KLM ceo Ben Smith has given up his 2020 bonus, after a Dutch minister urged executive pay restraint in return for the billions of euros in government aid sought by the airline group.

Betting mogul **GVC Holdings** announced that its board and remuneration committees had approved a 20 percent pay cut for executive committee members and no bonus payments for certain staff for 2020, as part of its plan to mitigate the impact of the Covid-19 pandemic on the business. In addition, directors and senior executives agreed to forego their bonuses for 2020. Ceo Kenny Alexander had been due to receive a bonus payment of £2m for GVC's performance in the 12 months to December 31. Meanwhile, cfo Rob Wood was due a bonus of £658,000 for the year, following the departure of Paul Bowtell. Its agm had been due to take place at the end of April but was postponed due to Covid-19. GVC in March chose to cancel a planned dividend payment due to uncertainty. Betting is down because many sporting events have been cancelled to help slow the spread of the virus. The company said that the impact on profit is around £50m per month. It is using the government scheme to award grants to business to help with employment costs, as GVC has placed retail staff on furlough and on full pay.

Almost 30 percent of **Goldman Sachs** voting shareholders failed to approve ceo David Solomon's $24.7m reward package against the background of the Covid-19 pandemic. Only seventy-one percent of shareholders approved his 2019 compensation package, at its virtual agm, which was Goldman's weakest top pay approval level since 2016 and way down from 91 percent last year. The 58-year-old ceo's reward — up almost 20 percent from the previous year — came under scrutiny after proxy adviser Institutional Shareholder Services (ISS) argued his total reward was out of line at a time when more than 30 million Americans had filed for unemployment. Goldman posted disappointing results last year as it racked up more than $1bn dollars' worth of legal costs arising from the firm's 1MDB misadventure in Malaysia. At the agm, the bank was asked to consider suspending executive bonuses and dividends during the pandemic, *but the board refused, saying it would keep paying dividends and defended Solomon's reward package*. Board member Michele Burns said Goldman believed that Solomon's reward was in line with that of his predecessor, as much of his pay comprised Goldman stock that he would be unable to realise for quite some time. One ceo who made more than Solomon in 2019 was JPMorgan Chase's Jamie Dimon, who received $31.5m. Dimon has been in charge of his bank for almost 15 years, compared to two years for Solomon

Lloyds Bank gave shares worth £200 to every member of staff last month to thank them for their efforts during the Covid-19 pandemic. The bank rewarded 65,000 staff for handling an unprecedented number of calls requesting mortgage payment holidays, rescue loans and overdrafts. Senior managers said they recognised that customer-facing staff were under increasing pressure from irate members of the public who refused to distance themselves in branches. Some staff complained that members of the public had spat on them. The bank ramped up a campaign to improve customer behaviour in response to cases of abuse. Lloyds posted pre-tax profits of only £74m for the first quarter, down from £1.6bn over the

same period last year. It took a £1.4bn charge to cover for potential bad loans during the pandemic.

M & S axed its dividend for next year and attracted ridicule over its new marketing slogan: *Never The Same Again.*

The ceos of **Next** and **Dixons Carphone** urged ministers to clarify what will happen when the government's 80 percent paid furlough scheme for employees ends on June 30. A "faster and steeper" collapse in retail sales prompted Next to cancel or delay delivery of almost £1bn worth of stock, in addition to scrapping its dividend and share buyback scheme to save costs. Lord Wolfson and Alex Baldock respectively warned they could be forced into announcing redundancies unless there was certainty soon. *Companies wanting to lay off more than 100 employees in one go must carry out a 45 day consultation process with the affected employees first.*

Rupert Murdoch, executive chairman of News Corp will forgo his cash bonus for 2020. The bonus amount is a target that is set at $2m a year but which is dependent on the company achieving various performance metrics. He received a $2.2m bonus for the fiscal year ended June 2019. The Murdoch patriarch draws a salary as chairman of **Fox Corp** too. He agreed six weeks ago to forgo his base salary at Fox from April 22 to September 30. His base salary at Fox last year was $6.5m. News Corp ceo Robert Thomson will forgo 75 percent of his annual cash incentive bonus, which is set at a target of $5m. He received $5.5m last year. Based on $5m, he'd be giving up $3.75m. "With the impact of Covid-19, there will obviously be an impact on executive compensation, and it is worth noting that bonuses are often the largest cash component for our senior executives. Pay reductions will be led by our executive chairman, Rupert Murdoch, who is voluntarily forgoing his entire cash bonus for the current fiscal year, and as ceo, I will forgo 75 percent of my annual cash bonus. The collective cuts in bonuses and other cost initiatives will have a positive impact on profitability and our cash position," Thomson said in a statement announcing News Corp's fiscal third quarter results.

Almost one third of **Ocado's** voting shareholders gave the thumbs down, at its agm, to a £59m long-term shares bonus awarded to ceo Tim Steiner. Powerful institutional shareholders like BlackRock and Royal London Asset Management voted against Ocado's remuneration report, which featured an £88m LTIP pay-out to top executives, including Mr Steiner. Advisory group ISS urged investors to vote against the report, citing a "highly levered variable pay structure" and pay rises for the executive team. It advised investors to oust Andrew Harrison, head of the company's pay committee. Royal London said that Ocado's remuneration report showed how poorly designed incentive schemes could lead to excessive reward for executives. Stuart Rose, chairman of Ocado, said that the LTIP had vested in May 2019 after creating a record £7.5bn of value for shareholders. Ocado said it placed "great emphasis on ensuring its executive remuneration is closely tied to creating value for shareholders and our broader stakeholders".

Ryanair was set to cut 3,000 jobs – 15 percent of its workforce - as it restructures to cope with the pandemic. It said the posts under threat were mainly pilot and cabin crew jobs. There are likely to be pay cuts of up to 20 percent for remaining staff, the airline added. Ceo Michael O'Leary told the BBC that the planned cuts were "the minimum that we need just to survive the next 12 months." He said that if a vaccine was not found, "we may have to announce more cuts and deeper cuts in future". The restructuring could involve closing some UK regional hubs. It would take up to *six months* to refund passengers for flights cancelled because of the Covid-19 pandemic, he added.

Supermarket giant **J Sainsbury** handed almost £2m in bonus shares to its senior executive team less than a fortnight after deferring its final dividend. Departing ceo Mike Coupe and Simon Roberts, his successor, are among nine senior staff who recently received almost 950,000 shares in the grocery chain. The awards are worth £1.85m and came from the annual bonus plan for the last financial year, according to a stock exchange filing. Executives will have to wait two years before they can sell their shares. Mr Coupe, 59, will receive fewer than his allotted 239,000 bonus shares because he is due to retire in July. Sainsbury's will benefit from a £450m taxpayer-funded business rates holiday.

Oil major **Shell** cut its dividend for the first time since the Second World War. Pension funds and private investors alike were told that their quarterly dividend was being cut from 47cents to 16cents per share.

Shareholders in **Standard Life Aberdeen** blocked a proposal which would have allowed the funds management giant to hold virtual agms, instead of meetings in the flesh. The call for a change in the company's Articles of Association, to allow electronic agms, was opposed by 37 percent of voting shareholders, which was more than enough to sink it, as a minimum 75 percent shareholder assent was required.

WPP applied for £600m of taxpayers' support under the Covid Corporate Financing (Loans) Facility (CCFF). It had already suspended its dividend pay-out and its share buy-back programme. WPP has begun making job cuts and more could be on the way.

Record revolt over gambler's ceo reward package

Gambling company Playtech suffered the biggest pay revolt of the year so far as almost *two-thirds* of shareholders who voted at its agm gave the thumbs down to its non-binding remuneration report. What upset them most was the 38 percent increase in total reward (pay, bonuses and benefits) received by ceo Mor Weizer, giving him €2.9m (£2.6m) for the last financial year. Of this, only £1.1m was salary, while he made £1.5m in bonuses, the remainder comprising pension payments and perks.

Of the votes cast, 63.7 percent were recorded against Playtech's remuneration report. There were 199m votes cast overall, with a significantly high level – almost 25m votes - withheld. The vote was merely advisory, as shareholders are asked to approve Playtech's pay policy on a three-year basis – as they did, at its agm last year.

However, Playtech's board had all taken a 20 percent pay cut before the agm, in response to the pandemic. Executive pay has been a contentious issue for Playtech's shareholders in recent years. Its shares had surged after a trading update announced adjusted cash profits of €117m for its first quarter. The group's core gambling business-to-business (B2B) experienced a hike in activity in its online casino, although the enforced shutdown of sports betting outlets in the UK pushed Playtech's B2B sports arm into monthly adjusted cash losses of €3m. Playtech said that it had consulted shareholders on its remuneration policy prior to the meeting. "There was a mix of feedback and this will be considered when designing a new remuneration policy, which will be put to shareholders for approval at the 2021 agm," the company said. The re-election of Ian Penrose, who chairs the Playtech rem com, met opposition too, as 32.6 per cent of votes were cast against his return as a non-executive director.

Ceos' pay cuts cosmetic, claim

High-profile ceos who announced salary cuts during the pandemic downturn may not suffer at all. Salaries are typically only a fraction of an executive's overall pay package, with bonuses and shares making up the bulk. Critics claim such announcements are sometimes publicity stunts to earn public goodwill. They argue ceos benefit directly if the share price rises as a result of the gesture. Among the most high-profile to announce a cutback was Disney chairman Bob Iger who earned $3m (£2.4m) in basic salary last year. However, this base salary was only a fraction of his $47.5m total package. The remainder comprised a $21.8m bonus, stocks and other benefits. Mr Iger, who is worth more than $690m according to Forbes, said he would give up all his salary while the crisis lasts.

"*When wealthy ceos take salary cuts, I want to believe that they're sincere about doing their part. Unfortunately, the more I look into these matters, it's merely a public relations show*," said Jack Kelly, founder of a New York-based recruitment firm. Others taking salary cuts include Arne Sorenson, ceo of the Marriott hotel chain. Sorenson's basic salary was $1.3m last year, but his overall compensation was $13.4m. United Airlines' ceo Oscar Munoz said he would waive 100 percent of his $1.25m base salary until at least the end of June. Last year, this was only ten percent of his total remuneration package. Both airlines and hotels have been hit hard by the Covid-19 downturn and hundreds of thousands of jobs are at risk.

Ceos are often given free shares in the company as part of their remuneration package. When the share price goes up, their personal wealth rises too. "*Announcing you will take a salary cut will buy you a lot of goodwill and hopefully raise the company's stock price. Because the ceo's bonus is often linked to the share price as well, they will not lose money by giving up some of their salary*," said Sumit Agarwal, economics professor at the University of Singapore. Other experts backed salary sacrifices. "Sacrificing cash salary can reduce the number of employees who need to be furloughed," said Alex Edmans at the London Business School. In a US survey, Semler Brossy Consulting Group found that 84 percent of businesses had taken no action over executive pay. Two-thirds of companies had already made equity grants to executives this year and 94 percent did not plan on making changes to these awards.

Stay alive as a business by giving staff equity

When many US businesses were awaiting the signal to reopen their doors, Mark Cuban offered compelling advice for employers everywhere: "*Give your people equity in your company. Even if it's a small private company that may never grow big, if you're a dry cleaner, share*," Cuban said in an interview with *Linked-In*. "*Your employees will work harder. They'll recognise that they're an owner. They'll have a completely different perspective and that benefits everybody. As an employer, you'll need to depend on your employees more than ever*," the billionaire *Shark Tank* investor and owner of the *Dallas Mavericks* said, apropos suggesting what business owners could do to fight the negative effects of the pandemic.

Cuban has long believed in giving ownership to employees as a way to motivate them: "*When we sold Broadcast.com to Yahoo, 20 years ago, out of 330 employees, 300 became millionaires. Those 30 weren't only because they started too late. But they got paid as well,*" he said. '*Of course, once those employees are invested, it's important to leverage their relationships, as well as their smarts and*

knowledge of the business.'' He added: "By giving employees equity, you make them a greater partner in making sure the business succeeds. An additional advantage is that you can tap their knowledge for more ideas and potential innovation. *Some of the best ideas and some of the best approaches will come from them, because they're on the frontline*."

***Germany**: To implement this year's employee participation programme, Fraport- Frankfurt Airport Services Worldwide (FASW) was buying back its own shares through the stock exchange. To fulfil all claims, up to 100,000 of its own shares will be bought back. The process complies with regulations set out in the AktG (Aktiengesetz - German Stock Corporation Act). The share buy-back serves solely to fulfil obligations arising from the employee share capital programme of Fraport-FASW.The total purchase price (excluding incidental costs) is up to €3m. The share buyback will be completed by June 26.

***Finland**: As part of the **Aktia** Group's employee share savings plan, Aktia Bank issued 84,355 new shares, following authorisation by the agm. The share savings plan AktiaUna is open to all employees in the group and a participant is offered the opportunity to *save* a proportion of his/her salary to be used for acquisition of Aktia shares. The new savings shares will be acquired for the participants with their savings accrued during October 1 2019–March 31 2020. The shares have been subscribed at a price of €6.48 per share, which is based on the trade volume weighted average share price on Nasdaq Helsinki during April 1-30 2020 with a ten percent discount.

***Nigeria:** The ongoing process to convert the Nigerian Stock Exchange from a non-profit, member -owned mutual company limited by guarantee to a public limited liability company with issued share capital and shareholders scaled a major hurdle with the approval of the scheme of arrangement for the conversion by the Federal High Court. According to the scheme of arrangement for the conversion, the post de-mutualisation shareholders' base will comprise 255 institutional shareholders and 177 individual shareholders. The post demutualisation shareholding arrangement was arrived at by converting existing dealing members of the exchange to institutional shareholders and ordinary members to individual shareholders.

***Norway:** Solar power producer **Scatec Solar** extended its employee share purchase programme originally established last year. Participants may purchase shares with a subscription value of between Krone 19,661 (£1 = 12 Krone) and Krone 78,644. Employees are offered a general discount of Krone 3,000 on their total share purchase. In addition, a reduction of 20 percent from the subscription value will apply in exchange for the shares being subject to a two-year lock-up period. The shares will be allocated to employee participants on June 10.

US: Insurer **Aon** announced it would cut by 50 percent for six months the pay of the company's senior executives in response to the pandemic. In addition, 70 percent of its global workforce would suffer a 20 percent reduction in their salaries, while the rest would escape salary cuts. The broker vowed not to lay off employees during the crisis. Aon's non -executive directors agreed to a temporary 50 percent reduction in their cash compensation during the same time period. In addition to the payroll actions, Aon said it would be reducing expenditure on contractors and discretionary expenses not related to client service and freezing a share buyback plan.

*The CARES Act included several provisions to provide funding to struggling business during the Covid-19 outbreak. One of the lesser-known opportunities made it easier for companies to deduct net operating losses and claim an immediate tax refund. Among the many beneficiaries of this provision has been the oil industry. According to *Bloomberg*, at least 37 oil-related companies have claimed more than $1.9 bn in CARES Act tax benefits. While many in the industry are using this cash to help prop up their struggling businesses, at least one offshore contractor, **Diamond Offshore Drilling**, apparently used the funds to pay executive bonuses after filing for bankruptcy protection, said *The Motley Fool*. The company had recognised a $9.7m tax benefit. The company recently filed an emergency motion as part of its bankruptcy process so that it could pay out $16.7m in cash incentives to 85 of its 2,300 full-time employees, including $9.7m for nine senior executives, so the tax benefit matched the amount paid out to the top executives. The company deemed the payout necessary because the oil market downturn made its existing stock-based bonus programme effectively worthless. It's not the only financially challenged oil company to swap a stock-based bonus programme for cash payments amid the oil market downturn. **Whiting Petroleum** paid $14.6m in cash bonuses to several of its executives before it filed for bankruptcy. Meanwhile, deeply indebted driller **Chesapeake Energy** recently approved a plan to prepay $25m in incentive compensation to 21 of its executives to ensure they "remain motivated" as the company worked with advisors on a potential bankruptcy filing.

*Famous US retailer JC Penny gave its top executives total bonuses of $7.5m days before it filed for bankruptcy, it was disclosed in a regulatory filing. Ceo Jill Soltau received a $4.5m bonus and three other top executives received $1m each. However, there was no pay rise for its 90,000 employees who waited to learn whether they would still have jobs. The company claimed it needed to award the bonuses to "*retain and motivate''* the

named executives and said they were in line with bonuses awarded previously by other struggling US companies. However, critics demanded where on earth these executives – were they **not** paid these bonuses - would decamp to in the current pandemic-induced wasteland of the US economy?

*Dozens of US start-ups are laying off hundreds of staff. Proptech start-up Opendoor laid off 600 employees, SoftBank-backed robotics start-up Zume cut 200 employees and retail start-up The RealReal laid off 235 staff. Buzzy scooter start-ups, foodtech businesses and travel and transport scale-ups slashed staff numbers too. In Europe, the situation was not as dramatic. In part, this is due to various job retention schemes that are helping start-ups hold on to staff at little or no cost to them. Thousands of start-ups across Europe have temporarily laid off or reduced the hours worked by staff. In one survey, 41 percent of Nordic start-ups said they planned to reduce their workforce as a result of Covid-19. In another survey, 61 percent of French start-ups said they have used or are planning to use the *'chômage partiel'* (partial unemployment) scheme, as were 50 percent of the French Tech 120 start-ups. Meanwhile in the UK, data platform Beauhurst estimated that 22 percent of start-up and scale-up jobs are under threat, with a further 39 percent moderately at risk. For many of these employees, temporary lay offs won't be quite so temporary; these job retention schemes are delaying thousands of job losses at companies which will not have the capital to bring back employees once those schemes end.

*A Federal Reserve programme expected to begin shortly will provide hundreds of billions in emergency aid to large US corporations *without* requiring them to save jobs or limit payments to executives and shareholders. The central bank will buy up to $500bn in bonds issued by large companies. The companies will use the influx of cash as a financial lifeline, but are required to pay it back with interest. Unlike other portions of the relief for US business, however, this aid will be *exempt* from rules passed by Congress requiring recipients to limit dividends, executive compensation and stock buybacks and does not direct the companies to maintain certain employment levels. Critics say this could allow large companies who take the federal help to reward shareholders and executives without saving any jobs.

The programme was set up jointly by the Federal Reserve and the Treasury Department. "*I am struck that the administration is relying on the goodwill of the companies receiving this assistance*," said Eswar Prasad, an economist at Cornell University. "*A few months down the road, after the government purchases its debt, the company can turn around and issue a bunch of dividends to shareholders or fire its workers, and there's no clear path to get it back.*"

Treasury Secretary Steven Mnuchin defended the corporate aid programme, asserting that the lack of restrictions on recipients had been discussed and agreed by Congress. "This was highly discussed on a bi-partisan basis. This was thought through carefully," Mnuchin said in an interview. "What we agreed upon was direct loans would carry the restrictions, and the capital markets transactions would not carry the restrictions." Democrats asked for restrictions on how companies can use the money from the central bank's bond purchases, but they were rebuffed by the administration during negotiations over the CARES Act. Mnuchin said the programme had bolstered investor confidence in US capital markets, which in turn had helped firms raise capital they used to avoid layoffs.

The *Pay Check Protection Programme*, which offers $659bn for small businesses, *requires* companies to certify that funds will be used to "retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments." The *Main Street* programme offering up to $600 bn to "mid-size" businesses — those with 500 to 10,000 employees — forbids companies from issuing dividends and places limits on executive compensation, according to a term sheet issued by the Fed. Those restrictions are in effect until 12 months after the loan is no longer outstanding. The companies must "make reasonable efforts" to maintain payroll and retain employees. Likewise, the $46 bn rescue programme for airlines, air cargo companies and national security, forbids dividends and places limits on executive pay. Its requirement on retaining employment is more rigorous. Companies are required retain at least 90 percent of their employees if they are to avoid paying back the money. The Fed will still essentially lend money to large companies — by buying their bonds — *but the Fed will not be compelled by the CARES Act to ensure that companies abide by the divided and ceo pay rules.*

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