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newspad of the Employee Share Ownership Centre

Executive reward war in the spotlight at Paris summit

Three high-level presentations on the controversial issue of executive reward are lined-up for Newspad's inaugural employee equity summit in **Paris** on **Thursday June 15** and **Friday June 16 2017**. Consultants **Aon Hewitt**, **RM2** and **Willis Towers Watson** are all sending leading remuneration experts to discuss with delegates not only latest trends in executive reward – but ways forward from the turmoil - in light of mounting pressure from the City institutions, the media, politicians and the public - over what is perceived in some quarters as 'excessive' reward packages.

*There was dismay after house-builder **Crest Nicholson** announced that it would ignore a 58 percent shareholder vote at its agm against generous share awards for its top executives. As the vote was non-binding, the company said it would implement its remuneration report regardless. Crest Nicholson's ceo Stephen Stone, will receive a share bonus worth almost £812,000, on top of a salary of £541,158, while coo Patrick Bergin will net £562,500, in addition to basic pay of £375,000.

The vote came days after **Institutional Shareholder Services**, the investor advisory group, recommended that its members vote down the proposal, as it raised concerns that the profit targets written into the directors' terms for annual long-term incentive payments had been lowered, making them easy to achieve. Crest Nicholson defended its decision to set more conservative targets because of "the uncertain economic backdrop and the competitive environment in which the company operates". Its remuneration report outlined further plans to cut the target for pre-tax profit growth from 16-20 percent a year ago to between five and eight percent for the 2017 to 2019 period, citing challenging trading conditions. The target had already been cut from the 18-22 percent in 2015.

The vote against the Crest Nicholson remuneration report was symbolic, as investors approved the remuneration policy – that sets the broad approach to pay for the next three years and which is a binding vote.

Speakers at Newspad's Paris summit will be asked: 'What is the point of having a shareholder vote on executive incentive awards – usually in equity - if it is only advisory and companies then ignore massive votes against the board?'

From the Chairman

The Centre's stress on employee share ownership's role in combating inequality was well received in Brussels last week, when three Commission officials joined members of ProEFP in looking to the future. Inequality is high on the list of the Commission's broader priorities and it is keen to engage more with ProEFP of which the Centre was a founder member.

There was banter from all sides on the timing (that morning Mrs May's letter was delivered) but the Centre has always been the international voice for employee ownership, given the widespread interests of its members. We encouraged our friends at the Commission and in ProEFP to concentrate on the art of the possible, using nudges rather than tax breaks, exploring options and culling barriers whose removal was within the Commission's competence. We are sharing ideas with ProEFP leader Marco Cilento with a view to new initiatives.

Malcolm Hurlston CBE

Other companies, notably defence group **Chemring**, after facing the threat of a major rebellion at its agm, abandoned proposals to replace existing senior executive bonus schemes with more generous ones. **Imperial Brands**, **Safestore** and **Thomas Cook** made changes to their executive reward structures after complaints by shareholders, including City institutions.

Standard Life Investments, Crest Nicholson's second biggest shareholder, confirmed it too had voted against the remuneration report. It said: "We were disappointed that the company chose to substantially reduce the profit range at which incentives for management were paid, without consulting shareholders. As a result, we voted against the remuneration report."

Crest Nicholson said: "Every year, we have a regular dialogue with leading shareholders on a range of matters including remuneration. We will continue this engagement with shareholders and will discuss remuneration arrangements, next year's long-term incentive plan targets and seek to better communicate underlying rationale to shareholders with earlier engagement."

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 fax: 080 8280 1938 e-mail: esop@esopcentre.com
www.esopcentre.com

*Eyebrows were raised over news that the ousted boss of troubled aerospace and technology FTSE 250 group, **Cobham**, will get a **£1m golden parachute**, despite the company going into a tailspin. Bob Murphy is to receive his contracted one year's salary, as well as £200,000 to allow him to repatriate himself and his family to the US. Murphy received £1.52m in pay and benefits (though no bonus) last year, despite the company running up a pre-tax loss of £847.9m, up from £39.8m last time round. On an underlying basis, pre-tax profit was £175.2m, down from £280.4m a year ago. Revenue fell too. Since Murphy took control in 2012, Cobham has suffered from a costly acquisition spree, a financial scandal and a string of profit warnings.

*Over at British Gas owner **Centrica**, ceo Iain Conn's remuneration jumped almost 40 percent from £3.02m in 2015 to £4.15m in 2016, enough to pay the heating and lighting bills for 4,000 customers on the company's standard tariff. Details of the rise came just days after PM Theresa May said the energy market was "manifestly not working for all consumers." Much of the increase in Conn's remuneration package was a **£1.4m** 'recruitment award,' compensation for rewards he forfeited when he joined Centrica in January 2015 after a 29-year career at BP. He received an initial recruitment award last year of **£632,000**. His annual cash bonus rose by £178,000 to £759,000, but his £925,000 salary remained frozen. A Centrica spokeswoman said that in terms of financial performance, 2016 had been a very good year for the company, which posted an operating profit of £1.5bn, up by four percent on 2015. Conn told journalists: "When I joined the company I was asked to take a reduction in the top-end of what I could earn and also asked to take a reduction in my base pay and make sure 80 percent of it was performance-related. I believe the company is very responsible in this area." Although shareholders approved his current package, some expressed concerns about the one-off recruitment award.

*Meanwhile, the total reward of John Fallon, ceo of educational publisher **Pearson**, increased by 20 percent last year, despite the FTSE 100 company reporting a pre-tax loss of £2.6bn, the biggest in its history. Nevertheless, Pearson awarded Fallon £1.5m including a £343,000 bonus. In January almost £2bn was wiped from Pearson's market cap after it issued fifth profit warning in two years. The company said Fallon had received a cash bonus for hitting lower-end targets for operating profits. He hit the target that triggered his bonus because Pearson had fared so poorly that it paid £55m less than expected in overall management bonus payments. Fallon, who has pledged to use the bonus to buy shares in Pearson, received 44 percent of his target bonus and just under a quarter of his maximum potential bonus. His total remuneration was up 20 percent on 2015's £1.2m, a year when no bonus payouts were made to senior management because they failed to hit targets. His basic salary though remained frozen at £780,000.

"Shareholders will be worried that despite the PM's call rethinking rewards for failure that the board has recommended this award," said Sarah Wilson, ceo of investor advisory service **Manifest**. "Many shareholders are automatically voting against any increased awards and so this will just ratchet up tension."

Chris Cummings, ceo of the **Investment Association**, which represents shareholders, forecast that more companies would face shareholder rebellions this year: "As the starting gun is fired on this year's agm season, businesses around the UK would do well to heed the lessons from Brexit," he said.

"Too many people still feel they are not sharing in this country's prosperity. Companies can either act responsibly now and shape a more responsible 21st-century corporate Britain, or they can carry on as before and have it foisted upon them," he warned.

Another tricky issue certain to raise its head during the Paris summit is trustee alarm over an EU plan to give the general public on-demand access to company ownership registers. Amendments to the EU Anti-Money Laundering Directive (AMLD) would mean EU citizens could access beneficial ownership registers *without* having to demonstrate a 'legitimate interest' in the information. These controversial amendments were agreed on February 28 by MEPs on the Economic and Monetary Affairs Committee and the Civil Liberties Committee. At present, a 'legitimate interest' requirement restricts access to authorities and to professionals, such as journalists and lobbyists. The scope of the AMLD would be expanded to cover trusts and 'other types of legal arrangements having a structure or functions similar to trusts.' These were previously excluded from the Directive on privacy grounds, said Centre member **Deloitte**. Trusts would now have to meet the full transparency requirements of firms, including the need to identify beneficial owners. The UK government is fiercely opposed to this change, but looming Brexit may weaken the influence of the Channel Island Dependencies. If the European Parliament approves the changes, MEPs can then start three-way talks with the EU Commission and the Council. (See <http://deloi.tt/2msqSfL>). Trustee Centre members are watching developments closely.

Newspad thanks global legal group and long-time Centre member, **Clifford Chance**, for hosting this Anglo-French event in its imposing offices at 1, rue D'Astorg, Paris 8, off Boulevard Haussmann.

To encourage more plan issuers to attend, Newspad is waiving the entrance fee and instead is asking issuers to pay an administration fee (*to cover the cost of badges and programmes*) of just **£50** for each delegate place (*offered to plan issuer representatives only*).

The programme includes:

- Latest UK/US trends in employee ownership and management executive incentives
- Reporting executive remuneration schemes in France and in the EU generally

- Institutional shareholders – the new elephants in the C-suite? Panel session
- The 2017 EU Shareholder Rights Directive: its impact on executive and all-employee equity plans
- The impact of Market Abuse Regulations on employee equity plans
- Esops for the millennial generation
- Global share plan design
- Gender pay reporting and other employment legal minefields
- Brexit and UK based employee equity plans: Singapore of the North Sea, or a one-way ticket to Mars?
- Trustees & employee equity - latest on EBTs and company beneficial ownership
- National focus on broad-based French employee equity plans – *how they work, are the plans exportable? employee shareholder powers.*

Speakers include: Sian Halcrow of **Aon Hewitt**; Sonia Gilbert & Anne Lemercier of **Clifford Chance**; Richard Nelson of **Cytec Solutions**; David Hildebrandt, president of the **International Association for Financial Participation**; Rob Collard of **Macfarlanes**; Stephen Woodhouse of **Pett Franklin**; Garry Karch of **RM2**; David Lee & Bastien Martins da Torre of **Solium**; Hannah Needle of **Tapestry Compliance**; Nicholas Greenacre of **White & Case** and Damien Carnell of **Willis Towers Watson**. Another key speaker is **FONDACT** chairman, Michel Bon, former president of **France Telecom** and of supermarket group **Carrefour**.

Only one Paris speaker slot remains unallocated: To deliver a speaker presentation, you should register by email now – giving a brief outline of your intended topic. Subject to agreed content, speakers benefit from a significant fee reduction and will be charged only **£260**.

The conference e-brochure is logo co-sponsored by **Ocorian**, a leading Channel Islands based independent fund, corporate and private client service provider, which offers legal, trustee and incentive employee plan services in the Eso sector. Ocorian, based in Jersey, was previously **Bedell Trust** until it underwent a private equity backed MBO. Contact Paul Anderson, client director at **Ocorian**, for more detail on its services: paul.anderson@ocorian.com or phone: +44 (0)1534 507209.

Delegate prices:

Centre member practitioners: £395

Non-member practitioners: £695

Plan issuers: FREE (subject to £50 admin fee)

NB: No VAT is charged, as the event takes place outside the UK.

Registration and fee payment entitles all attendees to: Participate in all conference sessions; A buffet lunch and refreshments during coffee breaks; Programme with access to speech summaries and a drinks reception early evening, June 15, courtesy of **Clifford Chance**. Papers submitted for the summit will be

published by *newspad* and will be open for discussion on the Centre website.

More than 25 registrations have been made to date for the event.

Stay informed about the latest legal, regulatory, taxation, communication and market trends in international employee share schemes in both Europe and the US by attending this event. In addition, attendees will have the chance to discuss share plan strategies and networking with other industry experts. To register, please email the Esop Centre at **global@esopcentre.com** and give the name(s) of your delegate(s). For further information see the event's web page and download the e-brochure for programme and nearby accommodation suggestions. www.esopcentre.com. You should make your own travel and accommodation arrangements. We plan a 10.15 am start for the welcome & introduction on Thursday, to allow those on a tight budget to take the seven am Eurostar from St Pancras, arriving in Paris Gare du Nord at 10.15am. Your Paris contact is Centre international director Fred Hackworth. Email: fhackworth@esopcentre.com



OTHER EVENTS

Share schemes for trustees May 12

The Centre's 2017 Jersey share schemes and trustees conference will take place at the Pomme d'Or Hotel in **St Helier** on **Friday May 12**. Organised in conjunction with STEP Jersey, the annual half-day conference is an industry-leading networking and learning opportunity for those interested in share schemes and EBT trusteeship.

The programme comprises presentations on the latest taxation, legal and regulatory issues concerning employee share ownership in the Channel Islands and the UK.

Speakers include David Craddock of **David Craddock Consultancy Services**, Paul Malin of **Haines Watts**, Chris Lowe of **KPMG**, William Franklin of **Pett Franklin**, Graham Muir of **Nabarro** and Helen Hatton of **BDO Sator Regulatory Consulting**.

A no holds barred panel session will be followed by a networking lunch.

Delegate prices: Centre / STEP members: £350 Non-members: £450

Book now: To register your attendance, please email events@esopcentre.com or call 020 7239 4971

Centre – IoD conference Sept 12

The next **Centre-Institute of Directors** joint conference on employee share schemes in SMEs conference will be held in London on **Tuesday September 12**. This full day conference will help smaller companies decide whether to introduce an employee share scheme or deepen existing employee share ownership in their businesses.

With increased choice of government approved models available, employee share ownership is the flexible and powerful business structure where employees buy or are gifted shares in their company. Employees' ownership of shares in the company for which they work can be the tangible core of a culture of ownership and engagement. Binding dynamic, growing companies, are employees with a stake and strong sense of that stake. Latest news on the speaker line-up and topic slots is:

Introduction to employee share schemes - Robert Postlethwaite, md, Postlethwaite

Enterprise Management Incentives (EMI) - Liam Liddy, senior manager, Mazars

EMI case studies - David Craddock, David Craddock Consultancy Services

EMI alternatives - Catherine Gannon, managing partner, Gannons

Employee Ownership Trusts - Nigel Mason, managing partner, RM2 Partnership

Share schemes & succession planning - Stephen Woodhouse, partner, Pett Franklin

Financing employee ownership - Garry Karch, managing partner, RM2

Email Daniel Helen at events@esopcentre.com to register your interest.

UPDATE

Roadchef employee shareholders face years more delay

Hundreds of present and former **Roadchef** employee shareholders, hit by the sale of shares, without their knowledge, from the company's employee benefit trust EBT more than 20 years ago, could face years more delay before they get any compensation.

This dire prospect emerged from a recent letter sent by the Roadchef trustee to update all the Roadchef beneficiaries. In it, it was revealed that:

*Despite having had the file for almost two years, HMRC has yet to decide whether the ex-Roadchef employee shareholders will have to pay Capital Gains Tax (CGT) on their compensation payments, in addition to Income Tax and NICs, which collectively could amount to up to 36 per cent of the net proceeds.

*Even after the tax payments are finally agreed, the proposed final settlement will have to go back to court for approval by the judge, which signals yet another lengthy delay in this seemingly never-ending compensation process.

Newspad has been contacted by several former

Roadchef employees who are incensed by the news that they will have to wait even longer before they get any compensation.

Centre chairman Malcolm Hurlston is took suggestions from influential members of the Centre's steering committee last week about ending the unconscionable delay in getting compensation payments finally paid to those who were cruelly robbed of their employee shareholdings shortly before the company was sold to Japanese investors.

Former pheasant plucker, Tim Ingram Hill, who became Roadchef's ceo, later masterminded its sale to Japanese investors, gaining tens of millions from his personal Roadchef shareholding, which by then had grown to more than 60 percent.

However, at the High Court compensation case mounted many years later by the Roadchef trustee, the judge ruled that the maximum compensation which could be claimed from him had shrunk to **£29.6m**, plus compound interest and grossing up, whilst Ingram Hill's lawyers said the maximum reclaimable was £13.5m.

A tax payment of £20m made by Ingram Hill, on the sale of his shares to Nikko, and a lost investment of £12.5m in a shares exchange he was required to make as a condition of the takeover, had to be deducted from what the trustee could reclaim in compensation on behalf of the employee shareholders, ruled Mrs Justice Proudman.

The case, brought by the Esop trustee in the High Court, Chancery Division, apparently ended three years ago when Mrs Justice Proudman ruled that: "A transfer of shares from one EBT to another (EBT2) was void because the trustees of the transferring EBT did not properly consider the criteria for the exercise of their power and the transfer was made for an improper purpose. *Roadchef (Employee Benefits Trustees) Ltd v Hill & Anor [2014] EWHC 109 (Ch)* (29 January 2014).

In her ruling, the judge said: "**The options (for which he paid nothing) dealt Mr Ingram Hill all the cards; if the value of the shares went down, he did not have to exercise the options. If on the other hand they went up, he would make a huge profit. He was in the position to negotiate the takeover of Roadchef. In fact he did negotiate such a takeover, the price did rise and he did make a killing.**"

However, it took another year before Ingram Hill agreed an out of court compensation settlement, the size of which is still subject to a 'gagging' order.

"The judge found that the transfer was part of a preconceived plan to acquire the shares, and that Mr Ingram Hill had exerted improper pressure on the other directors, who simply did what they were told, believing they had no other choice," the trustee's lawyer, Cardiff based **Capital Law**, said in a statement after the ruling. There is no suggestion that Mr Ingram Hill broke any law by transferring employee shares from one trust to another set up by him.

An extraordinary complication – according to an anonymous source – was that Mrs Justice Proudman effectively ruled that it was not only the original road services station staff, who were members of the Esop, who had to be compensated. Others in line for compensation payments could be:

a few hundred other employees who were not members of the Roadchef Esop
even **current** Roadchef employees may well get some cash, even if they were never members of the Esop.

This share out formula seems extraordinary, but – according to speculation - both Capital Law and the trustee REBT1 felt obliged to accept the *interpretation* placed on Mr Gee’s original trust deed by Mrs Justice Proudman. It is suspected that more than 2,000 Roadchef employees, taken on during the last 17 years by the new owners of Roadchef after its sale could get some of the compensation cash too.

It is believed that the original employee Esop participants will share 61 percent of the net proceeds; the second category – ‘non-qualifying’ employees - get will 30 percent and current (non originals) employees will share the remaining nine percent.

However, such is the reach of the ‘gagging’ court orders, that no-one associated with the case will confirm or refute the speculation.

HMRC has yet to sign off the tax bills, despite repeated requests by the Esop Centre and by Capital Law. Tax inspectors have ignored the Centre’s repeated requests too for transparency regarding the way in which it is dealing with the tax issues on the grounds that it never comments on individual cases.

All qualifying staff at Roadchef, which has 21 UK service stations, were set to benefit after their former md Patrick Gee, who had led the 1983 MBO of the firm, decided to give them about 20 percent of its shares in the mid-1980s. However, he died while the scheme was being set up and his successor, Ingram Hill, unveiled one of the UK’s first Esops a year later. Roadchef staff received an initial 12.25 per cent of the equity – reserved for them on an equal basis. Gee’s estate later gifted more shares to staff, who at one time held more than 30 percent of the shares. However, when **Ingram Hill** sold Roadchef to Japanese investors, the ownership had changed. By then he controlled 60 percent of the equity and the staff share was down to below five percent.

The trustee’s claim queried the 1998 transfer of shares in Roadchef between two trusts, EBT1 and EBT2. The original EBT – called EBT 1 - operated an employee share ownership plan for the benefit of all qualifying Roadchef employees, while EBT2 was used to provide share incentives to senior management. The case concerned the circumstances in which the senior management trustees granted options over the shares to Ingram Hill personally, who served in senior posts at the company over the years, including as md, chairman and ceo.

It was not until a change in the law that the Roadchef

EBT trustee was allowed to bring in **Harbour**, a litigation funding company, which agreed to fund the case in court.

Mrs Justice Proudman said in her ruling that: “REBTL’s factual allegation was that Mr Ingram Hill made certain deliberate and premeditated arrangements, as follows: He arranged for a company of which he was a director to be appointed as the trustee of EBT2 He arranged for the EBT2 trust deed to be amended so that he could benefit while remaining a director and the prohibition against directors benefiting did not apply to him. He arranged for REBTL to be appointed as trustee of EBT1 and then secured his appointment as director of REBTL. He persuaded REBTL to resolve to transfer all the unappropriated shares then owned by EBT1 to EBT2. He then secured the grant to himself by EBT2 of share options over the shareholding. He exercised the options and sold the shares as part of the sale of Roadchef at the price of 131p per share, thus making a (net) profit from the sale of some £26.8m.”

Eso needs new solutions - Centre chairman

All-employee share ownership is in need of innovative solutions, Centre chairman **Malcolm Hurlston** told leading trade unionists, share scheme specialists and EU officials, at a Brussels conference co-financed by the European Commission.

Three aspects which badly needed fresh responses were inequality, localism and opacity, Mr Hurlston told the **Pro Employee Financial Participation (EFP)** network during a two-day review of benchmarking employee involvement in post-crisis Europe.

Whereas humble-born charioteers in ancient Rome could expect to earn the equivalent of almost £1bn during their working lifetimes, the opportunities to defeat inequality these days were far harder for employees, he said. For example, large numbers had the opportunity to invest in share schemes run by their employers, but could not afford to do so. “We are looking at new ideas about how we can surmount that obstacle,” the chairman told delegates from ten EU member states. Not enough trade unionists yet realised that share scheme participation enabled workers to improve their democratic rights by voting their shares at company meetings. Unions might ask their share scheme participating members for permission to exercise their ‘voice’ on their behalf at agms, though that was a controversial issue.

Partly to help local towns and regions keep their jobs, the UK had developed the Employee Ownership Trust (EOT), which encouraged those SME business owners who wanted an exit to gain a tax advantage by selling at least 51 percent of their shares to the workforce. The problem had always been that employees could rarely afford to buy the majority stake, so how best could that be remedied. Occasionally owners could afford to be generous, some states offered support and rare banks were up for the risk but the Centre was now

promoting the popular US practice of giving seller notes (effectively loans from owners) centre stage. It worked well with the EOT in the UK and could be followed up in Europe, said Mr Hurlston.

The third big problem - that of opacity - meant it was difficult for employees, when considering whether to take part in share schemes, to find out what was really happening in the companies for which they worked. The government did not allow companies themselves to urge workers to participate in such schemes, but decision logic, made directly available to employees could be a large part of the answer. Related to this was the need to diversify. Was it sensible to confine investment in employee shares to just the company he or she worked for, as in the UK? The Eso industry had been slow to adapt and has shied from giving workers good personal advice.

Jeroen Jutte, head of unit at the Employment & Social Affairs Directorate General of the European Commission, said he was delighted by the Centre chairman's characterisation of what the Commission's policy approach should be as 'nudge, nudge,' rather than push and shove. "Nudging is a very nice policy approach because we are in the business of persuasion" said the EU official.

Centre international director **Fred Hackworth**, told delegates that Eso/EFP had to have buy-in from all the social partners, including trade unions, if it was to do more to reduce growing inequality and to expand economic democracy. As Mr Hurlston had indicated, the Commission could work more with multinational companies to improve the take-up of all-employee share options based plans. That was the way forward because even if the market value of the share (over which the employees held options) ended up lower than the initial option price—usually discounted by 20 percent—then workers would not lose money. If they had invested monthly in an SAYE-Sharesave, they would get their savings back. Similarly, the Company Share Option Plan (CSOP) was a good way to incentivise and reward low-paid workers, such as supermarket check-out staff, because they did not have to put any of their wages up front in order to participate.

The Commission should ask itself whether regulations and directives covering employee equity could be further simplified, as the OTS had helped achieve in the UK and the Commission could encourage more listed companies to give all their employees an equal number of free shares, whatever their rank, as the Danish ferry company **DFDS** had done recently. Hackworth explained how increasing numbers of professional architectural and legal UK partnerships had converted themselves into employee-owned companies. The previous UK Coalition government had helped spin off dozens of health trusts into the employee-owned sector. The biggest had been the Royal Mail, 12 percent of which was owned by its employees after its privatisation. The Communications Workers Union, with whom the

Centre had liaised, had cottoned on quickly by asking its lawyers whether the union could create an employee trust for the postal workers' employee shares. The new **EU Shareholders' Rights Directive** (see separate story below) could be used by employee shareholders, if they voted regularly at agms, to enforce transparency of company information, deter predator companies, initiate surveillance of executive reward rises, ensure protection of workers' rights and so on, added Hackworth.

**The bon mot that Brussels is the 'city of meetings' was never more justified than in the sad experience of Romanian delegate and trade union leader V. Gogescu, who confessed that he had spent most of the morning listening to a series of presentations about how to improve food yields from various types of soil, before belatedly realising that he was in the wrong room.*

Employee shareholder alarm at Imagination

The sudden near two-thirds plunge in the share price of UK chip designer Imagination Technologies, after Apple said it would end a deal to use its products, offers a lesson to the employee share ownership movement. The move by Apple, Imagination's largest customer, means the loss of lucrative royalty payments, probably from late next year.

Once a stock market darling, Imagination's high tech products, as used in 'Pure Evoke' radios, wowed customers and earned fortunes for staff who participated in its various Eso schemes. Former Imagination share plans manager, Tony Llewellyn, was a popular speaker at Centre international conferences and spoke with pride about the lines of Porsches in the company car park.

Now the immediate future looks grim for those in current schemes. At least those in option schemes – as opposed to share purchase - will get their money back when their savings contracts mature.

However, it is an error to think that all those who participate in option schemes are automatically immune from loss. That is *not* the case where employees who have taken up their options in maturing schemes hang on to most of the shares they have purchased. Perhaps months later if the company share price collapses, they are left holding devalued shares and nursing real money losses.

Unfortunately, the UK framework for tax-approved share schemes does not allow room, unlike in France and the US, for any diversification in employee shareholders' holdings. The Centre argues that those employee shareholders who want to build up long-term holdings should have the right to transfer *some* of their shares into broader-based holdings, so if disaster strikes, the entire store of accumulated employee share value is not wiped out.

Apple aims to stop using Imagination products within the next two years, as it develops its own technology, but this may not be easy without infringing patents. Imagination relies on Apple for almost half of its revenues, as the US giant using the UK firm's chip

technology in its iPhones, iPads, and iPods under a licensing agreement.



MOVERS & SHAKERS

*Centre member **Cytec Solutions** launched a new software tool, *Insidertrack* for advisers. It is designed for organisations which have access to confidential or price sensitive info for multiple third party organisations, assisting them to manage their internal compliance and external regulatory obligations. Please contact md Richard Nelson for more details and/or to arrange a demo at tel: 020 7001 0600 or by email at: Richard.Nelson@cytecsolutions.com.

*As predicted in last month's issue of *newspad*, some of the City's banking behemoths were preparing to ship staff onto the European mainland as the PM served formal notice under Article 50 to begin the UK's two year exit process from the EU.

First out of the traps was **Goldman Sachs**, which said it would start moving 'hundreds' of staff out of London before a Brexit deal was struck. A lot more removal vans will be seen arriving in Frankfurt and Paris shortly. UK share scheme advisers and remuneration consultants are rolling up their sleeves, ready for the extra work, once they have precise details on who is moving where and when. Richard Gnodde, ceo of Goldman Sachs International, said "We are going to start to execute relocations as part of the bank's contingency plan for the UK leaving the EU." Gnodde said that Goldman, which employs 6,000 staff in London, would take extra office space in *Frankfurt* and *Paris*. "Over the next 18 months or so we are going to upgrade those facilities, we'll be taking extra space in a number of them and be increasing our headcount and infrastructure around those facilities." The numbers involved were "**in the hundreds of people as opposed to anything much greater than that**" and, in addition, its plans would involve hiring extra people in the remaining 27 EU countries. "We start with a significant European footprint; we are licensed with banks in Germany and in France," he added. Lloyds insurance market said it would set up a branch in Brussels staffed by 60 people. **HSBC** is planning to move around 1,000 trading staff to its Paris unit and **UBS** is likely to move about 1,000 of its 5,000 UK-based staff to the European mainland. US banking giant **JP Morgan** said publicly that 4,000 jobs would leave the UK, though no timetable was given, nor the destination(s)

of jobs to be transferred. Moreover, these are only what economists call 'direct' job losses, as to them must be added at least 2.5 times more 'indirect' job losses - in sandwich vendors, coffee shops, restaurants, hair salons, boutiques, tailors, dry cleaners and the rest,...

*Centre member **Solium Capital**, a leading global provider of outsourced share plan administration services, announced that **June Davenport** had returned from Sydney, Australia, to head up Solium's EMEA (Europe, Middle East & Africa) region. June's new job title is: Head, EMEA Trust & Nominee Services. Solium md Brian Craig said: "*We are very pleased to welcome back June and her energy, industry and share plans thought leadership acquired from experience across the globe. June was one of the founders of Solium's EMEA franchise, and she should feel an immense sense of pride as she returns to a team of 85 professionals spanning Europe with operating centres in London and Barcelona.*" In addition, Solium Capital announced that it had opened a new office in **Frankfurt**, Germany, supporting the company's growing international customer base in the EMEA region. Brian Craig said: "*Germany is a key market for Solium. Our German team is anchored by Iva Sonne and Maurice Robinson. Both are veterans in the market with a track record of working together, successfully. We are really excited about growing our presence in Germany and, in the process, elevating the level of service in the market.*" Solium's innovative software-as-a-service (SaaS) technology powers share plan administration and equity transactions for more than 3,000 corporate clients with employee participants in more than 100 countries.

*Seattle based equity compensation consultant and expert witness **Fred Whittlesey**, a regular speaker at Centre international events, has taken on an additional role - as a writer on the education website *Investor Junkie*.

***YBS Share Plans** welcomed 17 new clients last year for its Share Incentive Plan (SIP) and Sharesave services and six more for its Discretionary Share Plan service (DSP), operated in collaboration with **Investec Bank**. YBS managed 135 SIP and Sharesave invitations during 2016 and the employees covered by its clients were saving an average £130 per month, though slightly more, £136 per head, went into savings for new grants. YBS Share Plans arranged 136 share scheme maturities during the year. National sales manager **Louise Drake** said she was happy with high share plan client customer relations scores registered in the 2016 *KPMG Nunwood Relational Study*.

UK CORNER

Employees on the board

Ever since Theresa May using the hustings to suggest businesses might create employee-directors, quoted companies have been taking cautious steps to improve communications between directors and rank-and-file employees.

Engineering giant **Rolls-Royce**, hit by a £671m settlement of bribery and corruption charges, is to hold its first annual meeting for staff with the aim of improving communication with a global workforce of almost 50,000. The first meeting will be held in May in Derby, where the company has 14,000 staff. The board will take questions on a variety of topics after a year in which the fraud charges and sterling's plunge drove the company to a loss of £4.6bn, the biggest in its history. However, Rolls-Royce is not committing itself to appoint an employee to its board like **First Group** – *believed to be the only FTSE100 company to have appointed an employee director*. Rolls-Royce employees will have to apply for a place to attend the employee 'agm.' Those employees who own shares are already able to attend the shareholder agm on May 4. It is not clear if staff outside the UK will attend the employee 'agm' and plans are being made to video the event. Rolls Royce revealed that its remuneration committee had cancelled potential payouts to employees who were dismissed or resigned as part of its internal investigation into historic bribery and corruption: "In cases where employees have been dismissed or resigned as a result of Rolls-Royce's own internal investigation, shares and incentives have been cancelled in full as a consequence of the termination of their employment," the company said. A legal judgment had made it "very clear there was no culpability" on the present management team and so 2016 bonuses and future incentives would be unaffected. Last January almost 40 employees had their employment terminated for breaches of the company's Global Code in 2016, while 35 others were dismissed in 2015. Employees who were involved in the scandal but who left the firm prior to the implementation of the 2014 claw-back provisions, can hang on to their bonuses.

Meanwhile, **Sports Direct**, the retailer under regular fire over the treatment of its rank and file staff, said it would invite an employee representative to attend its board meetings. Predictably unions and business leaders warned that the move was not enough to solve the retailer's alleged corporate governance failings. The company founded and run by the one-off Mike Ashley began the process of appointing a staff representative to catch institutional shareholders and MPs on the wrong foot. Typically, Mike Ashley made the announcement in person. Candidates who make it through an assessment process will be invited to stand in an election, in which 23,000 Sports Direct staff (of whom 2,000 are employee shareholders) will be eligible to vote. The appointment will be made for a 12-month period, with a new representative to be elected annually. The first successful candidate will be chosen from the company's retail division, followed by someone working in the warehouse or head office in the second year. The cycle will then be repeated. Sports Direct said the representative would be "invited by the board to attend and speak at all scheduled board meetings on behalf of the people who work here". It said the employees' representative would "give workers a voice at the highest level and

to help ensure that all staff are treated with dignity and respect". Ashley said the move would offer a "great benefit" and provide "invaluable input".

*In its *2016 Future Forecast*, launched ahead of the government's green paper, 63 percent of **Chartered Management Institute (CMI)** members were supportive of the idea of having employee representatives in the boardroom. "Despite the government's move it's clear that many businesses need to do a much better job of listening to their employees. The government's focus on corporate governance is much to be welcomed and CMI will be continuing to feed into this agenda." CMI's *Management 2020* report asked more than 2,000 UK leaders and managers about their organisation's approach regarding mission, and the role it plays in governance. "What became clear was that any long-term business strategy should include measurable commitments not just financial targets but to the long-term purpose of the organisation as well. Too many boards, however, fail to take this broader perspective. This failure is driving an increasing dissatisfaction between middle managers and leadership teams, which was alarmingly illustrated in our 2016 report, *The Middle Manager Lifeline*: Only 36 percent of Britain's middle managers said they fully trusted their leaders. A transparent culture, with clear lines of communication from worker to board, is required to restore trust and belief in effective corporate governance."

Performance and pay disconnect

The latest data from the National Management Salary Survey from **XpertHR** and **CMI** indicates a disconnect between performance and pay in many UK organisations, and that earnings increases among senior leaders are outstripping those at lower levels. Bonuses remain divorced from performance in too many organisations, it said. The average FTSE 100 chief executive received a total reward package of £5.5m in 2015. Ceos have been impervious to the financial crisis and the economic ills that came in its wake. Packages in the FTSE 100 have seen a 32 percent rise since 2010. The typical ceo now earns **183 times** as much as the median pay of a full-time British employee, taking only three days to make what they earn in an entire year.

"CMI has argued that solutions require adoption of good management practice: clear targets, alignment of bonus criteria with performance, and preparedness to have difficult conversations. The perception that this is not being done successfully across business may explain why 74 percent of managers surveyed by CMI last December support the government in taking action to curb runaway executive pay," said the survey report.

"CMI supports the *government* in bringing forward measures to curb excessive and unearned pay – and specifically to strengthen transparency and support Remuneration Committees in achieving these ends. We broadly welcome measures to move business

towards a longer timeframe for evaluation of senior executive's performance and pay. Significant businesses are successfully defining their longer-term social purpose and seeking to escape from the tyranny of short-term financial metrics as the only measures of success."

New 'Spring of Discontent', Royal London warns

Increased government pressure on companies to address runaway pay, backed by a harder line from large investors, will bring a second *Shareholder Spring* of discontent, warned a City institution.

"Some of our private discussions with companies have led to their taking these messages on board, better aligning pay with performance," said Ashley Hamilton Claxton corporate governance manager at **Royal London Asset Management**.

"Others however have remained blind to the criticism despite pressure from investors and wider stakeholders." Claxton warned.

"Against this stormy climate, 2017 brings extra obligations on remuneration committees to get it right. Many companies will be asking shareholders to pass judgment not just on what to pay senior executives for this year, but on binding remuneration policies for the next three. After many years of stagnant growth and squeezed real incomes for British workers, big payouts are often hard to justify and warrant increased scrutiny this agm season.

We will not be approving proposals seeking to increase maximum payouts under the three-year policy, unless there are very convincing reasons for an increase. We will not look favourably on companies seeking to 'chase the median,' increasing pay to keep pace with peer groups. Pay rises where executives have truly taken on more responsibility or where the size or complexity of the business has increased will be reviewed on a case-by-case basis.

"As in previous years, we will not be approving complex pay plans. We favour simplified structures that include a short-term and long-term bonus and clear metrics tied to the key performance measures of the business. If we can't understand how a pay policy works and how it aims to incentivise boardroom performance, we doubt the executives themselves will be truly motivated by it.

"However, voting against policies can only get us so far. Many companies that faced shareholder rebellions last year, where we had voted against their pay practices for several years, have remained tone deaf. We have tried diligent private engagement in many cases, writing letters annually to the company to explain the reasons for our objections. *Yet we continue to see problematic pay packages approved by remuneration committees,*" added Claxton.

"We will consider, therefore, voting against the reappointment of the remuneration committee chairman where we have consistently voted against pay for several years. While we have shown more restraint in the past, abstaining in the case of director votes in the case of BG Group, this year we expect to use our vote against directors much more frequently."

Shareholder powers increased

The **European Parliament** voted overwhelmingly to give shareholders more powers, including a say on directors' remuneration, reported centre member **Pinsent Masons**. Changes to the existing **Shareholders' Rights Directive** will make it easier for shareholders to exercise their voting rights and for companies to identify their shareholders. Institutional investors, such as pension funds, life insurance companies and asset managers will be required to publish a policy showing how they include shareholder engagement in their investment strategies, or explain why they have chosen not to do so, the Parliament said. Proxy advisors who provide research and recommendations on how to vote in general meetings to their clients will have to disclose information including their main sources and the methodologies applied in developing their advice. Rapporteur Sergio Gaetano Cofferati said: "The agreement on the Shareholders' Rights Directive we have approved is very positive. The measures agreed will help steer investments towards a more long-term oriented approach and will ensure more transparency for listed companies and investors." The draft law still needs to be formally approved by the EU Council of Ministers. Member states will have two years from the application of the directive to bring the new rules into force. Centre chairman Malcolm Hurlston said: "It is vital that employee shareholders, like all shareholders, get the vote with no ifting and butting. We are working closely with the UK Shareholders Association."

Regulators on the march

The UK's data watchdog is planning to hire hundreds more staff to enforce a strict new regime that will crack down on the mishandling of consumers' personal information. The **Information Commissioner's Office (ICO)**, already in reorganisational turmoil, will expand its roster of investigators, lawyers, analysts and policy advisers by 40 percent in the next two years as it prepares the nation to adopt a once in a generation change in the law. It will mean around 200 new staff joining the watchdog and higher high house prices in leafy Wilmslow, Cheshire. Brussels' new data protection laws, which the UK plans to adopt despite Brexit, will hand the regulator the power to force companies to obtain clear consent before processing citizens' data. It will enforce mandatory disclosures for companies that suffer a data breach. Added to the ICO's arsenal will be the ability to impose fines of up to €20m (£17.4m), or four percent of global turnover, for breaches, whether they are from human error or a cyber-attack. At the moment its maximum penalty is £500,000.

Budget Eso impact

There were no new direct changes to the employee share scheme legislation in the Spring Budget, but there were some announcements that may have significant longer-term impacts on employee share schemes, said Centre member **Pett Franklin**.

Enterprise Management Incentives (EMI): “Most welcome was the government’s announcement that it would, in 2018, seek approval for the continuation of the exemption from EU State Aid rules for EMI options to allow this tax relief to continue beyond 2018. Some had speculated that the government might take the expiration of the exemption in 2018 as an opportunity to withdraw EMI relief, so it is an encouraging sign that the government recognises that allowing a capital gains tax treatment on business growth through EMI options is important to sustain a vibrant private sector after Brexit. However, an extension of the exemption in 2018 requires EU co-operation and so concerns remain that achieving this exemption for EMI may be complicated by Brexit negotiations.

Employment Status: A planned increase in National Insurance (NIC) **Class four** contributions for the self-employed was announced in the Budget and then scrapped by red-faced Chancellor Philip Hammond a week later, leaving a £2bn hole in his Budget financing. The rationale behind his original proposal was that it was unfair that the same income should suffer different levels of taxation, depending upon whether a person was employed or self-employed, but the subsequent outcry among Tory MPs forced ‘*Spreadsheet Phil*’ to beat a hasty retreat. He added: “For the avoidance of doubt, and as I set out in the Budget, we will go ahead with the abolition of **Class two** NICs from April 2018. Class two is an outdated and regressive tax, and it remains right that it should go. I will set out in the autumn Budget further measures to fund, in full, my decision. The Government will await the report from Matthew Taylor on the future of employment, consider its overall approach to employment status and rights to tax and entitlement and bring forward further proposals. It will not however bring forward increases to NICs later in this Parliament.”

Dividend Allowance: “The reduction of the annual tax free dividend allowance from £5,000 to £2,000 from April 2018 reduces the attractiveness of holding shares in one’s employer. However, for most participants in employee share schemes, it is the opportunity for capital growth rather than dividend income which is the main attraction. The change may encourage companies with Share Incentive Plans (SIP) to look again at using tax efficient SIP dividend shares rather than paying cash dividends.

New Close Company Gateway postponed until 2018: Potential collateral damage arising from the initial proposals has been identified and so implementation has been postponed to allow for further consultation.

Abolition of Tax Reliefs for Employee Shareholder Status (ESS): The withdrawal of the ESS tax reliefs announced and implemented last year was confirmed. The **Substantial shareholding exemption (SSE)** rules, as anticipated, will be simplified by removing the investing company requirement and providing a more comprehensive exemption for companies owned

by qualifying institutional investors. Following consultation, amendments have been made to provide clarity and certainty. The changes took effect from April 1 this year, said Centre member **Deloitte**.

The government will consult on specific aspects of **remuneration** in order to make the system fairer and more coherent. The tax system treats different forms of remuneration differently and the government wants to rationalise the system following consultation. Specifically it will consult on the taxation of benefits in kind, accommodation benefits and employee expenses.

The **Financial Conduct Authority** published its latest quarterly consultation, which featured proposed changes to the Prospectus Rules, in order to mirror the new EU Prospectus Regulation and some transitional provisions relating to the UK Corporate Governance Code, reported Centre member **Linklaters**.

The **Finance (No 2) Bill** was published on March 20. It runs to 774 pages, making it the longest ever Finance Bill. See <http://deloi.tt/2o0wudP>. The explanatory notes are at <http://deloi.tt/2niFoGI>. The Bill will have its Second Reading on April 18.

COMPANIES

*FTSE 100 miner **Anglo American** attempted to head off a fresh row over executive pay by capping the size of bonus payouts in the face of sharp movements in its share price. More than 40 percent of its shareholders voted against its pay deals last year and the company is publishing its executive remuneration schemes this year at a time of renewed scrutiny over directors’ equity reward schemes following Theresa May’s pledge to clamp down on corporate excess. The mining company’s share price has formed a V-shape in the past two years, falling from £11.60 in early 2015 to below 225p in January 2016 before rallying to more than £11 again. These movements affect executive pay as bonuses are linked to awards of shares relative to salary: so when the share price is low, the executive receives a higher number of shares and when the share price rallies the shares released from long-term schemes are worth more. Ceo Mark Cutifani was entitled to shares worth **350 percent** of his £1.3m salary that pay out after a three-year performance period. In 2015 he received 360,000 shares, which rose to a whopping 993,000 shares last year – then valued at £4.4m but now worth nearly £12m. Sir Philip Hampton, who chairs the remuneration committee, said: “We were determined to address investors’ concerns about the potential windfall gains for executive directors arising as a result of the volatility of the company’s share price and the mining industry more generally.” Cutifani will now be able to receive shares worth ‘only’ 300 percent of his £1.3m salary compared to 350 percent and will have his gains from bonuses issued between 2014 and 2016 limited to £13.1m. From this year on, gains will

be limited to twice the face value of the shares when they were granted. His reward in 2016 was £4m, up from £3.4m, fuelled by a £2.3m bonus. **The Pensions and Lifetime Savings Association** said the proposed reductions did not go far enough.

***Barclays** gave ten senior executives share awards worth almost £23m, of whom cfo Paul Compton, poached from US rival **JP Morgan**, emerged as biggest winner, with £7.6m in vested shares and freshly granted deferred stock awards. His package was boosted by the 'hire fee,' as Barclays replaced bonuses he sacrificed on leaving the Wall Street bank. Overall, the £23m collectively awarded to executives such as Barclays UK boss Ashok Vaswani includes £13.6m already released and a further £9.2m of awards granted as part of the bank's 2016 bonus scheme, deferred for at least five years. The £13.6m compares to £8.7m shared by nine bankers a year earlier. Compton is among a number of senior JP Morgan bankers to have followed Jes Staley, Barclays' ceo, to the UK lender. Staley himself spent three decades at the US firm before taking the helm of Barclays late in 2015. He received almost £487,000 in vested shares and was granted deferred awards worth about £916,000, Barclays.

***John Lewis Partnership**, which is owned by the UK's first employee benefit trust, cut its annual bonus – for the fourth consecutive year - to just six percent of 86,700 employees' annual salaries. Their bonus, equivalent to more than three weeks' wages, came down from ten percent last year. The partnership decided to hold back more of its annual profit in the face of an "increasingly uncertain market this year." It is the lowest bonus since 1954, when it stood at four percent of pay. Pre-tax profit, before the partnership bonus and exceptional items, rose 21.2 percent to £370.4m. The annual bonus was as high as 17 percent of pay in 2013.

*Tax payer owned **Royal Bank of Scotland (RBS)** awarded £16m in share bonuses to its top management team. The bank revealed the bonus awards to nine executives an hour after Philip Hammond delivered his Budget and said he did not know when the Treasury would be able to sell off any of its 73 percent stake in the bailed-out bank. The announcement by the Edinburgh-based bank included details of an extra £6m in bonuses that were being paid out after being awarded in previous years. When RBS reported **losses of £8bn** for 2016, the bank's chairman, Sir Howard Davies, had attempted to justify the need to pay bonuses by saying staff should not be penalised for the 'sins of the past'. A year ago, the management team were awarded bonuses worth £17.4m. Since RBS's £45bn taxpayer bailout during the financial crisis, it has reported nine consecutive years of losses amounting to **£58bn**. The bonuses, which will not pay out before 2020, include executives outside the boardroom, such as Chris Marks, head of investment banking, NatWest Markets, who was awarded shares of more than £2m. Other awards include £1.8m to Alison Rose, who runs

the commercial bank, and £1.2m for Les Matheson, head of high street banking. The annual reward of RBS ceo Ross McEwan was disclosed as more than £3m for 2016. In addition, he was awarded almost £3m in shares that he will receive from 2021, provided performance criteria are reached. New Zealand-born McEwan revealed he planned to cut a further £2bn in costs by the end of 2020, although he declined to give figures for job and branch cuts. The bank's headcount has shrunk from 180,000 employees in 2008 to 80,000 now, mainly through job cuts. As more and more customers bank online, it has closed 450 branches since the end of 2013, taking its network down to about 1,550.

***Safestore** became the latest company to drop changes to its directors' pay and benefits after coming under pressure from its shareholders. The self-storage company said that after an "extensive consultation process" for the changes, which could have netted its ceo shares worth more than £9m, it had decided to withdraw the proposals. As a result, the existing policy, which was signed off in 2014, will remain in place until October. In the meantime the company will seek to amend it to something acceptable to all investors. The new policy would have granted Frederic Vecchiolo a maximum of 2.5m shares after five years, worth £9.4m at current prices. Almost 40 of the company's top bosses would have benefited, although performance conditions for the rewards would have been tightened. In January, tobacco giant **Imperial Brands** backed down in the face of a rising shareholder rebellion over plans to hand its top executives a potential multimillion pound pay hike. The business had planned a 100pc increase in the maximum bonus payable to ceo Alison Cooper, from three and a half times her base salary to a pay deal worth four and a half times its size.

***Sir Martin Sorrell**, the UK's highest-paid ceo, was awarded shares in **WPP** worth **£41.6m**, in his final payout from the advertising giant's controversial incentive scheme. Sir Martin's total remuneration for the past five years has topped £200m. His new award was 34 percent less than his record-breaking **£63m** share package last year, which prompted a third of WPP shareholders to reject the company's remuneration report at its agm. The five-year incentive scheme under which Sir Martin topped the FTSE 100 pay leader-board, known as LEAP, was discontinued and replaced with a less generous system. *WPP was forced to overhaul its remuneration policy after a majority of shareholders rejected its remuneration report in 2012.* WPP said its shares had increased in value by 169 percent, against only a 28 percent average rise in the FTSE 100.

***Standard Life**'s ceo took a 20 percent compensation cut last year after its board bowed to City pressure over executive remuneration. Keith Skeoch's reward package fell to £2.7m last year, compared to £3.6m in 2015. Melanie Gee, remuneration committee chairman, explained that shareholders had raised concerns over terms for new board members, Skeoch's

promotion to ceo and the termination arrangements for previous boss David Nish. Skeoch consequently *volunteered* a reduction in the value of his long-term incentive plan, while the committee agreed a new limit on annual awards and reviewed its approach to bonuses during gardening leave. Gee said open, frank and constructive meetings held with investors were shaping future pay policies. Skeoch's reward cut came despite Standard Life's assets under management growing 16 percent to £357bn last year. Operating profit before tax was up nine percent at £723m.



TRUSTEE CORNER

Rangers EBT case

Legal arguments have been heard by the Supreme Court in the case concerning whether payments made by **Rangers Football Club (RFC 2012)** to players and executives at the club were subject to income tax deductions. The case centres on payments made by RFC 2012 into employee benefit trusts (EBTs). The payments were made by Murray International Holdings (MIH), the then owner of Rangers, and other group companies to employees between 2001 and 2009. Rangers International Football Club plc (RIFC), which was set up after RFC 2012 went into liquidation, is not a party to the case. HMRC challenged the legality of the arrangements and won a 2015 ruling before the Court of Session in Edinburgh in which the court held that the payments were “a mere redirection of emoluments or earnings” which should have been “subject to income tax”. RFC 2012 appealed against that ruling before the Supreme Court.

Tax expert Paul Noble of Centre member **Pinsent Masons**, said: “HMRC has viewed the use of EBTs as ‘disguised remuneration’, and relentlessly pursued the users of them on this basis. Even if the case were to go against HMRC here, however, the impacts would be somewhat diluted. HMRC’s recent tactics, including delaying and dragging out enquiries to place pressure on those targeted, mean that many users of EBTs will already have been forced to settle their cases. In addition, legislation will be introduced from 2019 to tax outstanding loans provided by the EBT to employees which will mean that irrespective of this judgement, a tax liability would crystallise if the loans remain unpaid”.

EBTs are usually set up by employers for the benefit of employees and directors or family members. They

were historically used by some advisers, particularly hedge funds and banks, to manage tax payments on bonuses. HMRC has been targeting the abusive use of these structures for a number of years, as it sees them as a means of artificially lowering income tax and national insurance charges on remuneration to employees. So-called ‘disguised remuneration’ rules took effect from April 6 2011. They were introduced to tackle the use of trusts or other structures by employers as a way of avoiding, deferring or reducing tax liabilities. The rules created a charge to income tax where third party arrangements are used to provide payments in connection with an employee’s current, former or future employment. Where this is the case, the amount will usually be deemed employment income which is taxable through pay as you earn (PAYE). The Supreme Court’s decision will be handed down in due course.

WORLD NEWSPAD

ESO on the rise in Europe

Employee share ownership is growing across Europe. The ownership stake held by employees in large European companies has never been so high before, with 3.20 percent in 2016 compared to 2.48 percent in 2006, *according to EFES*. The survey was based on 2.335 European listed companies in 2016, representing 99 percent of the whole European stock market capitalisation and 95 percent in terms of employment. Among these companies, the employees’ ownership stake was ‘significant’ in 1.220 or 52 percent of them (employees holding one percent of the total equity or more), it was ‘strategic’ in 464 or 20 percent of them (employees holding six percent or more) and it was ‘controlling’ in 266 or 11 percent of them (employees holding 20 percent or more of the equity). Even the largest companies are considering mass employee ownership. For instance **Voestalpine** - steel industry (Austria) - with 48.000 of its employees holding 14.5 percent of the equity in a foundation, worth €721m in 2016 (*see the case study featured at the Centre’s Vienna conference last year*); Saint-Gobain - building materials (France) - with 170.000 employees holding 8.1 percent or €1,788m; Veidekke - heavy construction (Norway) - with 7.000 employees holding 15.4 percent or €241m; Svenska Handelsbanken (Sweden) with 12.000 employees holding 10.3 percent or €2,082m, Mondragon Corporación – multi-sectoral (Spain), with 74.000 employees holding 90 percent, or €4,026m, Siemens, electronics (Germany) with 348,000 employees holding three percent or €2,532m; Prysmian, wire and cable industry (Italy) with 19,000 employees holding 2.5 percent, worth €115m in 2016. In most of these companies, employee ownership is the result of employee share plans with some common characteristics: open to all employees on a voluntary basis, share price discounts and fiscal support, annually offered, and having to cope with different rules and tax legislation in each European country. Representation and participation in corporate

governance is even more complicated and it can be found mainly in those countries where it has been foreseen in dedicated legislation.

France - reduction of free share plans tax benefits

Tapestry Compliance had already reported that the French government was proposing to reduce the tax benefits available to employees participating in free share plans approved under the 'Macron' regime which came into force in August 2015. As expected, the proposals were passed by the French parliament and apply to any free share plan launched after December 31 2016 (the date the French 2017 Tax Bill took effect). The changes increase the employer social security contribution and reduce the tax benefit for employees, although the reduction in the tax benefit is not as severe as initially proposed as it only applies to the portion of an acquisition gain which is more than €300,000. Under the new rules:

*The employer social security rate has increased from 20 percent to 30 percent

*For employees, any acquisition gain below €300,000 will continue to be taxed under the more favourable capital gains tax treatment but amounts over that cap will be taxed as salary, so at income tax rates and subject to social taxes and tax surcharge.

Other rules regarding the tax treatment and the structure of free shares were not changed. *Tapestry* said: *"In view of the current political situation, we expect that further changes to the taxation of free share plans are likely. Given this uncertainty, we continue to recommend that companies operating share plans in France undertake an annual review and seek appropriate legal advice before any awards are made."*

Germany

In January, the German financial regulator (BaFin) published an updated version of a draft remuneration ordinance for credit institutions. The ordinance addressed several issues, such as identifying risk takers, differentiating remuneration types and the forms of variable remunerations, but a key feature is the obligation on banks to include claw-back provisions in employment contracts for senior managers and risk takers in cases of severe misconduct, this would include behaviour which causes regulatory breaches or severe losses for the bank. In addition to including the claw-back provisions in new contracts, banks are required to attempt to amend existing contracts to comply with the new rules. As claw-back provisions have

generally been regarded as unenforceable in Germany, this could prove difficult for companies to comply with but they will need to demonstrate that they have made an effort to do so. Although claw-back was included in the earlier draft of the Ordinance, the revised draft extends the period during which a bonus payment can be subject to claw-back from one year after the deferral period, to two years. As a result, a bonus which is subject to a minimum mandatory five-year deferral period will be at risk of claw-back for up to seven years after grant. The new rule will not apply to banks with assets under €15bn. The Ordinance implements the **European Banking Authority's** Guidelines on a sound remuneration policy, now in force since January this year.

*Germany's rich have been getting richer and its poor poorer, a government report seen by *Reuters* showed, shattering the popular global image of a wealthy country with equal access to high-paying jobs in a robust labour market. It found that between 1995 and 2015, the lowest-earning 40 percent of the workforce saw their gross hourly wages decrease by four to seven percent in real terms. But the top 60 percent saw real hourly pay increases ranging from one to ten percent over the same period. The report, prepared by the Ministry of Labour and Social Affairs, still needs approval by other ministries before formal publication. Refugees -- 890,000 of whom arrived in Germany in 2015 -- were included in the report, and the ministry said it believed they had contributed to a rise in the poverty rate. It added that it was unable to quantify the effect refugees had on poverty as data on the new arrivals remains scarce. Rather, it said the refugee influx led to a rise in people seeking vocational training, which is good for an economy that suffers labour shortages in most if not all sectors.

US

A new *Equilar* study found that the total stock ownership value gained by ceos of Dow 30 companies increased by \$402m in the three-month period following the election of President Donald Trump. Two Wall Street bank chiefs saw the largest increases in both total value as well as percentage value growth of their shareholdings. In aggregate, Dow 30 ceos had total investment of \$2.2 bn in their companies' stock at the market's close on last November 7, which increased to **\$2.5 bn** at market close on Inauguration Day (January 20). That figure grew again to \$2.6 bn three weeks later. Overall, the gains represented a rise of **18.4** percent in a three-month period, outpacing the DJIA overall, which grew 11 percent in that

WHITE & CASE

timeframe. Just two of the ceos—Lloyd Blankfein of **Goldman Sachs** and Jamie Dimon of **JPMorgan Chase**—accounted for almost two-thirds of these total gains, or \$261m of the total. The value of Blankfein’s 2.4m shares in Goldman Sachs registered an increase of **\$145.4m** as the company’s stock price grew from \$181.48 to \$242.72 between November 7 and February 10. Meanwhile, Dimon, who had more than twice as many shares – 6.7m- in his company as any other ceo in the Dow 30, saw the value of his stock go up \$115.5m on the strength of gains in the bank’s share price from \$69.88 to \$87.00.

***Ceo pay is rigged—claim**

The compensation packages of top US ceos have been rising faster than just about any rational metric upon which they are supposedly based, said **Barry Ritholtz** at *Bloomberg*. “Ceo pay grew an astounding **943 percent** over the past 37 years,” according to a recent **Economic Policy Institute** analysis. EPI further observed that this spectacular level of executive reward rises was far faster than retail price inflation, the productivity of the economy, and the stock market. Ceo compensation isn’t the pay for performance its advocates claim. Instead, it is unmoored from any rational basis. This made it an inappropriate wealth transfer from shareholders to management, wrote *Ritholtz*: “You can place much of the blame on compensation consultants and the corporate boards that hire them. Boards are supposed to act on behalf of shareholders when they are considering the pay packages created by the former, but the relationships are riddled with conflicts that produce the charade we have today.

“Compensation consultants created easily reached targets as a basis for so-called performance-based pay. But even that low bar has been bastardised. It isn’t merely the gluttony; rather, it’s the performance, or often the lack of it.”

According to the *Wall Street Journal*, research firm Audit Analytics looked at how often the term ‘**non-GAAP**’ appeared in proxies disclosing management pay for companies in the Standard & Poor’s 500 Index. It found that the phrase appeared 58 percent of the time last year, up from 27 percent five years ago. GAAP stands for generally accepted accounting principles. “**Using non-GAAP accounting creates much easier performance targets for senior management to hit to justify fat compensation.** This is consistent with earnings being increasingly gamed by companies. But it is an admission too by management that, whatever quibbles you might have with GAAP, a lot of non-GAAP accounting means that they’re just *making it up as they go along*,” said Ritholtz.

“Improvisation may be great for jazz musicians and stand-up comedians, but it has no place in the tool kit of corporate executives and accountants. But that is the only way that many underperforming management teams are able to capture their gargantuan compensation. We know more today than ever about how over-the-top executive pay has become. That’s

because there is an increasing amount of data available about management compensation, thanks to one little-known aspect of the Dodd-Frank Act, making it easier to compare executive compensation against corporate stock returns.

“The startling results confirm what some of us have long suspected: the most overpaid ceos actually destroy shareholder value. To quote a Harvard Law School study: “The ten companies we identified as the most overpaid firms as a group **under-performed** the S&P 500 index by a gaping 10.5 percent and actually demolished shareholder value as a group with **minus 5.7 percent** financial returns.

The giant fund companies like **BlackRock** and **Vanguard Group** are in a good position to apply pressure on the over-payers. Funds hold about 25 percent of all US equities, according to Rosanna Landis Weaver, author of *‘Power of the Proxy,’* a study of executive compensation. There are signs that this starting to happen. BlackRock told the *Financial Times* that in 2015 it had voted against 16 percent of management proposals on compensation globally. Vanguard Chairman and ceo Bill McNabb said that rather than relying solely on proxy votes, it had been pressuring companies behind the scenes to pare back outrageous packages. That approach makes sense, given that the indexing giant, for the most part, can’t simply sell the stock of uncooperative companies without uncoupling their funds from the indexes they are trying to track.

“The reality remains that shareholders are paying executives big bucks for simply keeping a chair warm during a bull market. That isn’t performance-based pay; it’s dumb-luck-based pay,” said Ritholtz.

“Executives should be paid for how well they do relative to their peer group. Relative performance versus a company’s competitors provides a basis for justifying higher than average compensation. Basing pay on absolute stock performance tells you little about management performance if we are in a bull or bear market.

“There are other readily identifiable, easily tracked metrics versus corporate peers that make much more sense to use as the basis for compensation. I would suggest starting with: a) revenue and earnings growth; b) return on invested capital; c) development and execution of long-term strategy; d) innovation and intellectual-property development; and e) market-share gains. Note that the stock price isn’t one of these metrics. Executive pay should resemble a zero-sum game. If one ceo gets a huge bonus, it means he or she is doing better than the competition -- and management of those other companies should get much smaller bonuses. When you see all pay going up in an industry group, you know something’s wrong.”

Canada

Alberta is slashing executive pay and perks at 23 of its agencies, boards and commissions, including ensuring health benefits are aligned with those of public sector executives in other regions. The changes

are expected to save \$16m a year and will affect 270 executive and management employees. They include setting salary bands for ceos, eliminating executive bonuses, capping executive severance pay at 12 months, and eliminating perks such as retention bonuses and housing allowances.

Zimbabwe's efforts at redistributing wealth through empowerment schemes has registered various levels of success over the past seven years, raising questions on whether or not it would be prudent for government to revisit the whole process and correct many things that might have gone wrong. Employee and Community Share Ownership schemes are critical in ensuring that locals obtain significant benefits from the country's economic activities under the Indigenisation and Empowerment Act. However, of the more than 100 Employee Share Ownership Trusts approved by government since 2010, probably less than half have been successfully implemented while only 21 of the 61 Community Share Ownership schemes (CSOS) are operational.

Deputy Minister of Youth Development, Indigenisation and Empowerment, Mathias Tongofa, in 2015 said a total of \$134m had been pledged to different community share ownership schemes by qualifying businesses but only \$38.3m had been deposited into their bank accounts. Of this amount, \$14.7m was channelled towards development projects while the remaining \$23m remained banked. The figures are paltry to say the least. They barely support the notion that employees and local communities whose natural resources are being exploited, must have a say through guaranteed shareholding in these companies.

One Esot company success story is Zimplats. The platinum producer ceded ten percent of its shareholding to the Mhondoro-Ngezi-Chegutu-Zvimba Community Share Ownership Trust and pledged \$10m to help operationalise the trust. The \$10m was largely invested on the money market and to date, the CsoT has realised more than \$2m return on investment, which has been used to fund community projects. Earlier this month, the firm concluded the issue of a ten percent stake, valued at US\$95m to its Employee Share Ownership Trust. Noteworthy too is Gwanda CsoT, which received shares from Caledonia's Blanket Mine, Gaths Mine and Pretoria Portland Cement (PPC) since its launch in 2012. The companies pledged \$6.8m to the trust and reports show that by February last year, the CsoT had spent \$2.5m on income and developmental projects.

COMPANIES

***Ariston**, one of **Zimbabwe's** leading agricultural companies plans to give 20 percent of its equity to employees. Subject to shareholder approval, Ariston will set up an ESOT to look after the employees' shares, once they receive them.

***Anheuser-Busch InBev** scrapped bonus payouts for

ceo Carlos Brito and most of his top management team after earnings crashed. "When we do not meet our objectives, we take responsibility for it," the company said. "Performance has been disappointing in fiscal year 2016, and as a result, most of the executive board will not receive bonuses this year." Cfo Felipe Dutra will be left out of the bonus pool too. The brewer of *Budweiser*, *Stella* and *Corona* was weighed down last year by a "very weak" performance in Brito's home country of Brazil, where an economic slump hit beer consumption. AB InBev has 36 breweries in Brazil. Net profits in 2016 declined by 43 percent to \$4.6bn. The fourth quarter was particularly weak, with profits down 64 percent. "If you own a bakery and don't make any money one year, you don't get a bonus -- this is the same thing," Brito said. The company expects cost savings from its \$100 bn merger with rival **SABMiller** to reach \$2.8 bn, up from its previous estimate of \$2.5 bn. SABMiller was forced to sell off its stake in a handful of brands, including *Peroni* and *Grolsch*, to secure regulatory approval for the deal, which closed in 2016. The combined company boasts a portfolio of 500 beers, including seven of the top 10 global beer brands.

***AstraZeneca's** ceo, Pascal Soriot, enjoyed a 68 percent surge in his annual reward package last year as a number of long-term incentive plans and other rewards paid off.

Mr Soriot's base salary increased only marginally from £1.17m in 2015 to £1.19m in 2016, according to the pharmaceutical company's annual report. Although his annual bonus nearly halved from £2.04m to £1.168m, he earned **£6.91m** as part of a long-term incentive plan, as well as a one-off payment of **£3.62m** in compensation for bonuses he forfeited when he left his previous employer. This last award will not be paid out for another four years. It brought the Frenchman's total reward package for 2016, including other benefits and pension contributions, to **£13.4m**, up from £7.96m a year earlier. AstraZeneca's remuneration committee has proposed changes to some long-term bonuses that it said would be 'fairer' and promote long-term thinking. The changes will be put to shareholders at AstraZeneca's agm later this year.

***Deutsche Bank** cut its 2016 bonus pool by a whopping 80 percent, as Germany's biggest bank battled to shore up its financial position in the wake of heavy fines. Bonuses were cut to €0.5bn (£433m) from €2.4bn a year earlier. Total reward at the bank, which employs almost 100,000 people worldwide, was €8.9bn in 2016, down from €10.5bn the year before. Deutsche has been cutting costs - it shed more than a thousand jobs last year - and is raising €8bn through selling new shares. Karl von Rohr, chief administrative officer at Deutsche Bank, told *Frankfurter Allgemeine Sonntagszeitung* newspaper that bonus reductions were frustrating for staff, but said that the decision had been taken "very consciously, bearing in mind our shareholders." Deutsche's investors have not received a dividend for the past two years, as the bank has slipped deep into

it's our business

the red, posting a record €6.8bn net loss for 2015, and a €1.4bn loss for 2016 amid a raft of litigation and restructuring charges. In late December, the bank reached a \$7.2bn fine + compensation deal with the **US Department of Justice** to settle allegations that it mis-sold mortgage-backed securities before the financial crisis. It agreed to pay \$630m to settle US and UK investigations into alleged mirror trades used to launder \$10bn out of Russia. In the wake of the settlement with the DoJ, ceo John Cryan said Deutsche's management board had decided to waive their bonuses for 2016. He said employees with the titles vp, director and md would receive no individual bonuses for 2016, *although they would still be eligible for a group-wide bonus linked to the bank's overall performance*. The bonus cut came amid a debate over the level of executive pay in Germany, home to some of Europe's biggest companies, which is gearing up for a general election later this year. The centre-left Social Democrats, which govern the country in coalition with Angela Merkel's centre-right Christian Democrats, proposed draft legislation that would limit the tax deductibility of the salaries of top managers at public companies to €500,000.

***Volkswagen** slashed compensation of its senior executives by 37 percent last year as the German automaker reacted to criticism of past generous pay packages in the wake of the diesel-cheating scandal, reported *Bloomberg*. Reward for management-board members dropped to €39.5m euros from €63.2m in 2015, said the Wolfsburg-based company's annual report. Last year's compensation would have been even lower, but for a *€10m payout to legal-affairs chief Christine Hohmann-Dennhardt, who is leaving after just a year in post, following clashes with other executives*. Ceo Matthias Mueller's salary, benefits and bonuses jumped 52 percent to €7.25m in 2016, his first full year on the job, from €4.76m in 2015, when he served in the role for just a few months following predecessor Martin Winterkorn's sudden departure stemming from the revelation of *diesel-model emissions manipulation*. Volkswagen revised its compensation system recently to gear it more toward share performance than the carmaker's results. The ceo's remuneration is now capped at €10m and maximum compensation is reduced for other management-board members. VW's previously high pay came under fire in the aftermath of the emissions-cheating scandal, which has so far triggered **€22.6 bn** in damages and compensation paid by the company. Former ceo Winterkorn was Germany's best-paid executive for years as Volkswagen raked in record profits. The compensation policy was backed by the government of the German state of Lower Saxony,

VW's second-largest shareholder, as well as by union leaders. Outside investors effectively have no say, as the majority of the manufacturer's voting stock is controlled by Lower Saxony and members of the Porsche and Piech families. The new executive reward rates put Volkswagen more in line with peers. Mercedes-Benz parent Daimler-Benz paid its top managers €37.3m in 2015, while BMW's management board earned €34.8m

***Top executives at Wells Fargo**, including new ceo, Tim Sloan, got significantly larger stock awards for 2016, the same year in which the bank's two million fake-accounts scandal came to light. Last month, the San Francisco-based bank declared that Sloan and seven other top executives wouldn't get bonuses this year as part of: *"ongoing efforts to promote accountability and ensure Wells Fargo puts customer interests first,"* according to a board statement. However, the bank later revealed the full extent of the top execs' reward packages — including a major hike in stock awards, instead of bonuses. "They got less cash, but they could end up making more money than they did the previous year," Rosanna Weaver, a programme manager at corporate responsibility group *As You Sow*, told the *New York Post*. "It's a little bit misleading to make it look like they suffered a great deal," Weaver added. Sloan received a 17 percent boost in total compensation, to \$12.8m, for 2016, including a \$10.5m stock award bonus — about 62 percent more than he had received the year before, when he was president and coo. Last year, Sloan raked in \$11m, with \$2m in salary and \$6.5m in shares. The bank paid \$185m in fines and compensation last year for creating millions of fake accounts and credit cards to boost sales numbers. The scandal led to the resignation of former Wells Fargo ceo John Stumpf last October. He walked away with almost **\$84m** by exercising stock options. The reward packages still have to be approved at the bank's agm on April 25 at a remote golf resort in Florida. Wells Fargo shareholders will have the opportunity to voice their opinion on the bank's executive reward packages at the agm as they vote on the annual say-on-pay advisory resolution. An investigation report by the bank's independent directors into the fictitious accounts scandal is expected to be made public prior to the agm.

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