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it's our business

newspad of the Employee Share Ownership Centre

Top FTSE companies among Centre award winners

Leading FTSE companies including Henderson Global Investors, Nokia, and Rio Tinto were among the finalists recognised for best practice in employee share schemes at the Esop Centre's *Employee Share Ownership Awards 2016.*

The Centre's award winners and runners-up were announced during a glittering black-tie reception and dinner at the Reform Club in Pall Mall.

Nokia won the top award for best *international* all-employee share plan for its employee share purchase scheme, which operates in 46 countries.

The award for best all-employee share plan in a company with fewer than 1,500 employees went to Alderley Edge, Cheshire based telecoms engineering solutions specialist, Chess Ltd, while Henderson Global Investors was named winner in the best financial education category.

The full list of 2016 winners is:

- Best international all-employee share plan: **Nokia**. Very highly commended: **Rio Tinto.**
- Best all-employee share plan in a company with more than 1,500 employees: **Computershare**. Highly commended**: Just Eat**.
- Best all-employee share plan in a company with fewer than 1,500 employees: **Chess.**
- Best all-employee share plan communications: **Aviva.**
- Best financial education for its employees: **Henderson Global Investors.**

Introducing this year's awards ceremony, Centre chairman **Malcolm Hurlston** singled out for praise **Tencent Holdings** boss Pony Ma, who recently announced that all Tencent's 31,600 employees would get a gift of 300 shares worth $7,700 each to celebrate the company's thirtieth birthday. Tencent's subsidiaries provide media, entertainment, internet and mobile phone services and operate online advertising services in China.

Mr Hurlston said that employee share ownership fitted in well with the current wave of populism. Louisiana Governor Huey Long launched his Share our Wealth plan in 1934 with the slogan "Every man a king" and his son Senator Long was to introduce the bulk of Esop legislation in Congress.

From the Chairman

The great success of our awards dinner and first British Isles symposium underlined the importance of the Centre's mission. New work jostled for attention and priority. We need to bridge Business and Treasury, agree with the FCA a special role in financial guidance, champion sensible and balanced reward. Expert members play a key role in our work especially since our internal expertise lies in spin, comms and admin (I could phrase them more grandly). What we need now is more internal expertise and bodies. With events and membership we tick over safely. Next year we shall be offering marketing opportunities on our new website and here in newspad and we shall develop our own resources revenue from the popularity of the EOT. We shall prepare to celebrate 30 years since the Centre was incorporated in 1987. The founding members gave £8000 each. We have done quite a bit with it. Issuers large and small are making the Centre an early port of call, at conference and at special meetings, to carry forward operational and regulatory issues.

Malcolm Hurlston CBE

Eso could be part of PM Mrs May's antidote for the many millions of JAMs (the 'just about managing'), added the chairman, who forecast that the PM would not let her departments run their own Esop initiatives, but rather manage them herself.

Mr Hurlston emphasised the Centre's unique innovatory and research role in the share scheme industry – members like **Nigel Mason** of the **RM2 Partnership** – who were working on proposals to encourage employers to award long-term shares for employees to lodge in their pension schemes.

Referring to the companies and their advisers sitting around the tables, Mr Hurlston said: "Share plans play a role in the success of organisations large and small, transcending boundaries of nation and class. We need

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Computershare celebrates award wins

more of them for world well-being."

He thanked Reform Club former chairman and sports writer **Mihir Bose** for lending the Centre its magnificent panelled library for the evening and thanked company representatives for having submitted this year's top share plan entries. He interviewed Mihir on the difficulty of controlling high earning employees, such as sports stars and ceos.

The Centre's international director and newspad editor **Fred Hackworth** read out the judges comments on the entries in each Awards category and called the winners' representatives to the podium to receive their award certificates.

Best all-employee share plan communications

Aviva's winner's certificate for its successful *Aviva SAYE Plan* was collected by Elena Petrou.

Having inherited over 4,000 employees following the acquisition of the **Friends Life Group**, the judges were impressed at the high participation rate of Aviva's savings-related share option scheme designed to bring together old employees and new as they embarked on a new journey together. The plan communications were based around a car journey, putting the employee in the driver's seat, which was compounded with personal videos and emails from the ceo (*hopefully not crashing his car while reading an SMS from his shareplan manager!*).

Other finalists included **Barratt Development** for its *2015 ShareShave Plan* with different communication methods for different levels of share plan understanding and access to information. **Intertrust** employed a wide range of communication methods for its *Executive Ownership*, *Employee Share Ownership* and *Long Term Incentive* plans, but its all-employee plan was only a one-off celebration for staff.

Best financial education of employees

For the second year running**, Henderson Global Investor**'s winner's certificate was collected by **Shelly Ribbons** and **Alex Goodrich**.

With multiple share schemes running simultaneously for its 1,000 staff in the UK, Europe and the US, financial education is especially important. The judges were impressed by Henderson's high participation rates and the broad-based aspect of the financial education.

The Centre would like to attract many more entrants for this category, but the **Financial Conduct Authority** needs to be pushed for pre-approval of educational share plan materials so that companies/advisers do not steer away from financial education for fear of incurring a penalty for giving 'personal financial advice'.

Best all-employee share plan in a company with more than 1,500 employees

Computershare launched *One Plan* in June last year to bring together existing differing regional plans (after a series of acquisitions). Its winner's certificate was collected by **Jay Foley.**

This plan was developed from its UK Share Incentive Plan, which has operated among Computershare staff for a decade. The plan organisers got the ceo to make a supporting video. The plan offers vanilla matching in Europe, the Middle East and Africa and has a very good take up. The judges saw good use of the internet with avatars providing an upgraded form of webchat. They noted that Computershare's regional ceos all made their own videos.

Just Eat was **highly commended** in this category for its *Just Eat Sharesave* and its certificate was collected by **Clare Garrett** of Capita**.**

The judges agreed that there was good use of research to inform plan design and employee plan communications were good, but the 19 percent take-up to date seems low for a risk-free Sharesave, as once senior management is taken out, take-up goes down to ten percent even though roll out included some wealthier countries. However, Just Eat is a very young company which went public with a £360m IPO only two years ago.

Best all-employee share plan in a company with fewer than 1,500 employee

This category was won by **Chess Ltd**, a Cheshire-based telecoms service provider, nominated by its advisor Pett Franklin**.** Share schemes guru **David Pett** collected the client's certificate for its *Chess Ltd Joint Share Ownership Plan*. Chess won the national 'employer of the year' title at the European Business Awards 2016. The judges were impressed by the imaginative use of the JSOP (Joint Share Ownership Plan), which gives an imaginative twist to overcoming the challenges faced. Although the scheme itself is not yet all-employee, it has been created within a genuinely employee-owned company. The JSOP was put in place as a successor to the EMI scheme already running when acquisitions made the company too big to qualify for EMI. The plan is not offered to all employees as many of them already owned shares in the previous scheme. Taking this into account, Chess does pass the test in terms of broad base.

Best international all-employee share plan

Nokia won the keynote award for Share in Success, Nokia's voluntary Employee Share Purchase Plan. The judges were impressed by the fact that Nokia operates this plan in **46** countries with very high percentage take-up, including in China. It is a genuinely all-employee plan, helping to integrate employees, using excellent written communications, which were simply worded with plan names clearly describing what they are – and there is a share matching plan. Computershare's Britt Marie Kronqvist Merino collected the winning certificate on behalf of Nokia.

Rio Tinto, nominated by Computershare, was **very highly commended** for its *MyShare – Global Employee Share Plan*. Its certificate was collected by **Caroline Wong** of Rio Tinto. The judges were impressed by this plan's excellent videos and generally very good communications, with, necessarily, a lot of paper communications to get information to areas difficult to reach with internet. It is a plan spread over many countries with high uptake even in less share ownership friendly countries – and it offers generous share matching.

The other finalists in this category included **DAI** (Development Alternatives Inc.) for its *Global Employee Ownership* (GEOs) plan. The judges said that this was a good entry with a broad-based plan and high take-up rates, but DAI has as yet only extended the plan to one other country.

Randgold Resources's *Restricted Share Scheme*, which is a share incentive plan offered to employees since 2008 with awards subject to personal performance conditions. As the shares are currently worth around £77 each, this is a huge incentive, especially in African countries where the value of the award can secure them comfortable living for years to come. The judges felt that Randgold had picked the right plan for the countries it is operating in**,** but found it fitted with difficulty into the category since the restricted shares are awarded at company's discretion making it basically a retirement benefit.

EVENT REPORT

British Isles, Brexit and Say On Pay symposium

The Centre's two-day employee equity symposium, superbly hosted by member **White & Case** at its City HQ, was highly praised - for the stimulating quality of its *clear blue water* presentations – by many of the 55 people who came.

There was a strong contingent of major FTSE companies among the delegates, including **BT, Barclays, Expedia, Legal & General, Prudential, RBS, Signet Group** and **Smith & Nephew.**

Symposium chairman, **Malcolm Hurlston** explained that the programme encapsulated four main themes – the future of British Isles EBT trustees, the implications of Brexit for Eso, the impending corporate governance reforms, including Say On (Executive) Pay and latest conceptual thinking in employee share plan design and communication.

He said that Brexit was relevant because the UK's Prospectus Directive exemption might not survive long-term in EU jurisdictions, possible changes to share dealing rules and to the current share scheme data privacy regime.

Mr Hurlston urged the government to take urgent action to reinforce all-employee share ownership which, he feared, was mostly on the retreat in the UK, with the notable exception of Gordon Brown's very successful Enterprise Management Incentive (EMI) stock options based tax-protected scheme, now used by around 10,000 UK SMEs.

He said that the heavy 'top-down' appearance of Eso was partly to blame – most banks had never got behind Eso and most trade unions were still hostile or neutral at best. The share scheme industry itself had ignored the democratic rights of employee participants, whose shares were often held by uncommunicative brokers in nominee accounts.

"No-one knows or cares whether employee shareholders use their voting rights or not, so we are moving closer to one of our members, the UK Shareholders Association, to get this issue centre stage," said Mr Hurlston, who thanked **Equatex, Estera** and **Ocorian,** formerly Bedell Trust, for having co-sponsored the event e-brochure.

Stephen Woodhouse, partner at **Pett Franklin** said that share schemes were being affected by the Brexit uncertainty because many businesses didn't understand how exactly the UK's withdrawal from the EU would impact them.

Nevertheless, he said, the advantages of Eso participation remained: it limited the cash cost for businesses; it aligned the interests of shareholders and participants; employees shared the risk of uncertainty and Eso was a form of variable pay which was preferable to unemployment. In addition, Eso helped link executive pay to long-term company performance.

Attitudes were changing anyway – accountants Grant Thornton were creating their own EBT and imposing a maximum pay multiple on its ceo vis-a-vis its average salary levels. There was an obvious need too to combine share plans with long-term pension savings, added Stephen.

Graham Ward-Thompson, executive deputy chairman at **Howells Associates,** discussed the post-introduction phase of the Market Abuse Regulation (MAR). There were very few insider dealing prosecutions in Europe, though more in the US, said Graham. MAR became effective in July this year and includes provisions on: maintaining Insider lists; PDMRs (Person Discharging Managerial Responsibilities) and connected people and process for notifying transactions. These carried with them exhaustive personal data requirements and the issues of who would collect and supervise this data.

The government had said that as part of the Brexit process, a Great Repeal Act would be passed by parliament. It would bring MAR onto UK statute books, but – Would the UK be an acceptable state in which to hold EU data? Would we have become used to MAR by the time we exited? Or would we desperately return to the model code? Could it be a pawn in keeping the city within Europe? However, MAR was likely to be well down the politicians' list of important issues, he said.

There were plenty of practical issues concerning the MAR process requirements, many of which potentially added more bureaucracy. Often company payroll systems didn't talk to each other and was the ceo a member of the disclosure committee, or not. Furthermore, a market sensitive event, like an IPO, involved a lot of agents – printers, lawyers, accountants, bankers, financial advisors, PR agents, NoMADs etc and so the opportunity for a 'leak' was considerable. However, the issuer was responsible for third party lists and could be called to account, said Mr Ward-Thompson. Howells has developed special software called Insider Management System (IMTrack) to help companies deal with MAR.

Sara Cohen, corporate partner at **Lewis Silkin** highlighted two open questions: what would happen to EU State Aid restrictions and directors remuneration disclosures? Beyond those, would Brexit mean that we lost automatically membership of the European Economic Area (EEA) status – an issue which could be fought out in the courts? A US company used 'passporting' by installing a plan in one member country and then using that blueprint to install it elsewhere within the EU, but would that apply to the UK too post Brexit?

Sara explained that if the UK didn't join the EEA, UK companies with EEA employees would not be within the Prospectus Directive employee share scheme exemption and it could be more onerous to extend their share schemes to those employees. The UK might have its own regime which would make it more difficult for non-UK companies to include UK employees in their share plans and non-EEA countries could not benefit from intra-EU passporting, thus probably discouraging them from including UK employees in their share plans. Equally, however, the UK could introduce its own employee share scheme exemption or agree similar prospectus recognition rules.

If the UK didn't remain in the EEA post Brexit, the Commission would have to confirm that the UK laws conferred adequate protection on employees. Without this confirmation express consent would be needed from employees to transfer of data between EEA countries – implying a big increase in administration time and costs. The bar limiting EMI applications – like the below £30m gross assets test and the maximum 250 employees requirement – could be lowered if EU state aid restrictions no longer applied within the UK post Brexit. One EU initiative in the pipeline which the UK probably could not halt was the European Shareholders' Rights Directive, which would be applied here, she added.

Guest of honour and one of an impressive panoply of four expert contributors, **Lyndon Trott,** chairman of **Guernsey Finance** and the island's **deputy chief minister,** said that some businesses in the Crown Dependencies would 'fall by the wayside' as a result of Brexit – this would be collateral damage. He was working closely with London, Jersey and Brussels on the key issues. "Our financial services industry will remain intact," Mr Trott pledged. "We are not a tax haven, we are a safe haven and a regulated jurisdiction – as Brexit has focussed renewed attention on the importance of meeting international standards." A recent EY survey of Guernsey's business community revealed that 80 percent of them anticipated new growth and opportunities when Brexit occurred. He described the UK's future as what Guernsey's already is. Questioned as to what would happen to the Crown Dependencies' relationship with the EU once the UK's protective umbrella had been removed (post Brexit) Mr Trott replied: "Our enemies within the EU will remain." He was well aware of the threat from elements in Brussels to have the Channel Islands added to a *blacklist* of jurisdictions with which the Commission would advise EU companies not to deal. "We are trying to convince the EU that our nil rate Corporation Tax is good for member countries and the Netherlands agrees with the UK on that," added Mr Trott.

Jeremy Mindell, director of **Primondell,** discussed the potential tax consequences of Brexit for the UK. Fiscal policy – changing tax rates and spending levels – would become more important in the years ahead, rather than monetary policy – interest rates and money supply – he forecast. A 'hard' Brexit would mean: going back to bilateral agreements; separate VAT rates, abandoning special treatment for EU citizens and ignoring state aid rules, he said. The UK would resume its seat on the World Trade Organisation as a founder of the GATT. The UK would still be a member of the G7 and G20 groups and of the OECD (Organisation for Economic Co-operation & Development).

Leaving the EU would enable the UK to fix its own tax rates directly and deal with the kind of competition posed by the Republic of Ireland's 12.5 percent Corporation Tax rate, which the EU had failed to eradicate. On top of that was the issue of ASI (which owns Apple iPads and iPhones), which was incorporated in Ireland but managed in the US, so that it was resident in neither country, nor anywhere else, said Jeremy. A huge row was ongoing when the Commission told Ireland to demand around €13bn from Apple in back taxes as all ASI's profits (it claimed) should be taxed there but the clock was ticking away on Ireland's double business structures (separate Internet Protocol (IP) and sales activities) which would fall in 2020.

The UK could adopt the so-called Israeli option whereby all EU law would remain in force even after Brexit until at a later date it was decided which EU legislation or regulation the UK didn't want.

Mr Mindell said that the UK's chances of remaining within the EEA were "vanishing by the day" and so the WTO route for the UK looked "almost a certainty." No wonder travel agents and others were very worried. He forecast that hundreds of lobbyists would soon be scurrying back to the UK as Brexit neared. Finally, he predicted that pension tax relief would be cut back in the April 2017 Budget.

Nicholas Greenacre, global head of employment, compensation and benefits at **White & Case** kicked off the first afternoon session by discussing bankers' bonuses. There was a clash between the Bank of England, which believed that risk pay should be maximised and the EU, which believed that only variable pay should be put at risk and fixed pay not touched, he said. Despite UK government objections, stricter European Banking Authority guidelines on bankers' bonuses would apply from January next year. So after the UK government lodged Article 50 notice to leave the EU (*supposedly by March 31 next year*) would the BoE be tempted to ignore the EBA guideline and thus improve the competitive position of UK banking? Meanwhile, European institutions were preparing to be quite tough with the UK post Brexit – France was willing to grant an eight year exemption from its Wealth Tax to French citizens working in London in order to repatriate wealth creators and Italy was trying to get its bankers to go back to Milan by creating 'free zones' to encourage Italian banks to move there.

Nicholas said that it was pointless to discuss the 'workers on the board' project, since the PM had pre-empted the discussion by rowing back from her previously stated aim of forcing companies to have employee voices in the boardroom. The unitary board structure would remain and companies would be free to choose which model of board composition they preferred – for example the existing board, plus advisory committees to reflect employee interests. In large parts of the EU however, employees on the board in public companies was common, but there was no single model and employee participation rights varied considerably.

He reminded delegates that the UK Corporate Governance Code said that boards of public companies should comprise a majority of independent non-executive directors (i.e. not employees) and the risk of having employee directors was that decision-making could slow down and be 'politicised'.

Peter Parry, policy director at the **UK Shareholders Association** said that executive reward was a fine example of unintended consequences. There was a perception that directors' pay was out of control and did shareholders really need to pay them this much? In the smaller public companies – the FTSE 350 – ceo reward had risen 233 percent since the year 2000 –

way, way beyond price inflation, so were they really worth the huge increases in terms of extra performance? Share option plans were often a one-way bet and didn't align shareholder interests with those of senior executives, said Mr Parry. Long-Term Incentive Plans sometimes seemed like sticking plaster, installed to address another issue; there was too much short-termism and it was too easy to game the system. On the other hand, deferring executive equity awards limited the motivational effectiveness of performance plans.

Peter gave the example of the Taylor-Wimpey construction company in which shareholders had no idea that their ceo would coin in £6.7m in total reward last year and that his pension contributions, paid by the company, put his total figure way higher. He had achieved his performance targets easily, which was no surprise given the level of housing demand in the UK. As for the current binding shareholder vote once every three years on executive reward policy, that was merely a "charade," he claimed.

Where did we go from here? He asked. Many companies gave shareholders too much of the wrong information – it was unintelligible or misleading, Unfortunately, high pay levels in the private sector were pushing up pay in the public sector, where tens of thousands of public servants received substantial annual bonuses too. Bonuses of up to 700 percent of basic salary just did not make any sense, added Mr Parry.

Juliette Graham of employee incentives at **Linklaters** discussed renewing director remuneration policy in light of Brexit. She said that there was pressure from investors anyway to change the description and rationale of remuneration policy and then there were regulatory and market practice issues to consider too. Whether there should be a quantum – a maximum reward level – stated in the policy was now a key question. Performance targets in executive incentive schemes were often not made public as the companies claimed commercial confidentiality, but sometimes this was just an excuse to conceal them, said Juliette. Executive pensions were now under the microscope, as there were suspicions that bigger contributions were a backdoor way of raising executive reward.

Basic annual executive salary increases should be no more, proportionally, than those awarded to rank-and-file employees and in some cases zero increases to executive base salaries were justified. If performance targets had to be adjusted following a fall in the company share price, this had to be explained clearly to shareholders, said Juliette.

Brexit posed a number of issues for equity pay schemes, notably currency movements which would affect overseas employees of UK companies; lower share or option price offers to employees for new schemes, the impact on performance and thus executive/management pay-outs from employee equity schemes and possible eventual reimbursement of tax paid on share scheme benefits, she added.

Amanda Flint, Principal (Talent) at **Mercer** revealed the latest trends in international executive reward as extrapolated from recent surveys. There were some *positive* features to be pleased about at many companies:

*Performance criteria for incentives were more clearly linked to business strategy

*Simplification of incentive structures

*Performance periods and/or post-vesting holding periods extending beyond three years

*Clear explanations of remuneration committee decisions made

*Any discretion exercised is within the shareholder approved scope for discretion

*Clear alignment between pay and performance

However, remuneration committee actions viewed *negatively* included:

*Use of one-off awards (e.g. retention, transaction)

*Significant and sustained misalignment between pay and performance

*Unwarranted use of upwards remuneration committee discretion (or lack of appropriate downwards discretion)

*Multiple long-term incentives with repeated use of the same performance measure

*Unjustified above-inflation salary increases, or increases in excess of the wider workforce

*Poor disclosure of annual bonus targets

*Generous leaver treatment (e.g. dis-application of time and/or performance conditions

*Generous recruitment arrangements (e.g. buying out performance-vesting awards with time-vesting awards**)**

Amanda said that ten years ago, top pay in the US had been like the Wild West – huge sums were being paid out – but now things were changing fast. In Europe there had been movement towards an EU-wide mandate requiring binding votes on certain executive reward issues alongside a UK mandate, while in the US shareholder votes were non-binding. In Asia, there were no such mandates but employee engagement was determined by the type of business ownership.

Executive bonus malus – clawback – was being looked at in mid-size quoted companies across Europe. In the financial sector, compliance used to be a back-office phenomenon, but it had emerged from the shadows, she added.

Lots of banks had planned performance award changes during the past year as part of their management processes; they were subtle changes, a bit like turning the tanker around. In the M & A world, there were lots of foreign investors, especially from the Far East, trying to buy UK companies, despite Brexit. This trend would bring nice windfalls to employee equity plan participants and other owners such as the UK government, said Amanda. "Sadly, often the foreign owners won't offer shares to employees once they have taken control of the companies – and that means the death of more all-employee share schemes," she added. In some Far East countries, there was still little or no employee share ownership culture and in some jurisdictions foreign employees out there could not even open bank accounts.

Mr Hurlston opened the second day of the symposium by inviting attendees and other Centre members to register their enthusiasm, or otherwise, for potential future two-day newspad Summits in either: Calgary (Canada), New York, Brussels or Paris. Views on these potential venues for late spring or autumn events should be sent to Fred Hackworth by email at: fhackworth@esopcentre.com London would again host a British Isles event in 2017.

Liz Hunter, national head of share schemes at new Centre member **Mazars,** told delegates that HMRC was concerned about the tax gap – how much should have been collected and how much actually was – and so was gunning for new targets, including global enterprises with internationally mobile employees (IMEs). Increasingly, late annual online share plan registration penalties were becoming a bit like local authority parking fines – share plan sponsor companies could find themselves being milk cows if fines for late filing kept building up. Getting the share plan detail wrong could cost the company a £5,000 fine, as there was no longer the HMRC advance plan approval safety net. Then there was the new HMRC 'tea and biscuits' strategy – apparently friendly calls, asking to come round and see how things are progressing, but in reality they were checking for any irregularities in all new approved share schemes registered since April last year, she warned.

IMEs were a minefield because there were so many tax points to deal with concerning equity grants and vesting in different countries in which the mobile employees worked. Some companies had very sophisticated software which tracked the movements of their IMEs, knowing exactly where they were at any moment, but others had not.

Liz urged companies to 'look under the bonnet' and to disclose any regulatory failures to HMRC up front, rather than wait for the tax inspector to call. However HMRC took the thick end of a year to respond to voluntary disclosures. Given HMRC's excellent work in other sectors (he had congratulated HMRC prizewinners at a collections award ceremony in Manchester the previous week) the chairman said the Centre would take it up formally.

Marquee speaker **Sarah Wilson,** ceo of voting agency **Manifest,** said that the UK played a leading role in the corporate governance of public companies and that UK expertise in governance codes was being exported worldwide. Sarah has been giving evidence on corporate governance issues to a parliamentary select committee and was keen to stress: "We are not activists, but archivists," filing and using huge amounts of data about how companies deal with corporate governance issues.

Progress on many key issues was mixed: only 30 percent of company boards comprised women; Stagecoach was just about the only major company which had made a success of having employees on the main board – most of the others weren't interested and very few companies bothered to report to their shareholders on their workforce, except where health & safety was concerned. Manifest helped companies to increase their reporting on human capital, said Sarah.

On workplace democracy, she said that Eso participants were "proto-type directors" and that she understood the importance of employee share owners having a voice in the company's activities. Companies should create a committee for them with a board director liaising with them. Manifest would include employee share schemes in its reporting and Mr Hurlston announced that the Centre would work with members to create model reporting of share schemes.

Catherine Gannon, managing partner of **Gannons,** discussed the PM's critical remarks about the *Old Boy network* of non-executive directors (NEDs) in the UK's top companies and whether they were mostly just the ceo's poodles. According to one recent survey, only 40 percent of executives say that their NEDs are knowledgeable and useful. It was probably the case that more diversified NEDs, serving more diversified boards, made companies more profitable in the long-run. Many NEDs had been in post for more than six years and were difficult to remove. Many vacancies were not advertised, said Catherine. NEDs had fiduciary duties but prosecutions for suspected infringements of the Companies Act were rare. Sadly, the opportunity to reform the NEDs was missed during the updating of the UK Corporate Governance Code in September 2014. NEDs could be very useful in SMEs, as Gannons had seen first hand when advising venture capital backed companies.

Mrs May wanted NEDs to be drawn from wider backgrounds. What was needed from them was strategic insight, more business orientation and efficiency in their decision making, added Catherine.

Delegate **Jean-Michel Content**, of the Paris based **International Association of Financial Participation,** said that the boards of many larger French companies included representatives of employees and/or shareholder associations. In addition, technology experts and other specialists served on boards of some major companies. They were all paid fees, as they were not allowed to receive variable pay.

Lynette Jacobs, share plans & incentives team partner at **Pinsent Masons,** explored the implications of Mrs May's plans to strengthen shareholders ability to influence and veto top end executive reward packages. Since the Green Paper, published on the previous day, was consultative, there was still all to play for – nothing was written in stone. Lynette said she would focus her talk on whether shareholders should be given annual binding votes on executive reward packages; whether quoted companies would have to disclose their ceo:average employee pay ratios and whether annual bonus targets should be disclosed.

She outlined the controversy in France when earlier this year shareholders at Renault had voted down the huge reward package earned by boss Carlos Ghosn, only to hear the board say that they would ignore their verdict and pay him all the money anyway.

The French National Assembly now demanded annual shareholder approval for ceo pay; a shareholder vote on report detailing remuneration and approval for variable remuneration amounts, but the Senate might still scale that back.

Assuming binding shareholder votes would be reinforced by the UK government, what would companies do about pay and bonuses already awarded? Instead of having just yes/no votes on incentive packages, why couldn't shareholders have a list of award options to rate and vote on? What would be the impact of binding votes on senior executive recruitment? There would be unintended consequences like more agms/egms with all the additional expense and time.

How might annual binding votes work? The government could make them forward looking only – preventing past awards from being unpicked – or you could stick with the current rules whilst beefing up shareholder power through requiring annual re-election of directors, shareholder prior approval needed for new LTIPs and so on, said Lynette.

The Executive Remuneration Working Group final report had another idea – there would be binding votes if more than 25 percent of shareholders had voted against the *previous year's* remuneration report. It had concluded that executive remuneration structures were too complex and not fit for purpose.

Looking back on this year's agm season, it was clear that shareholders were not happy, said Lynette. In their eyes there had been too many non-performance awards, reward inflation levels were often above those received by rank-and-file employees, positive discretion in executive awards was always upward and there were too many unjustified formulaic outcomes.

Tory MP Chris Philp had proposed the interesting idea that big companies should have shareholder committees, comprising the five largest shareholders and an employee representative, to look at executive remuneration and pay ratios, question the board on its overall strategy and monitor executive appointments. Ms Jacobs went through rival proposals lodged by Fidelity International, Hermes, Legal & General, IM and the Investment Association. As for the 2017 agm season, her last slide displayed a pair of hands over a crystal ball…

The final speaker was **Stuart Bailey,** head of business development at **Equatex UK.** His was an unusual and fascinating subject – the value of behavioural economics in developing effective share ownership. Standard Life was among companies which were investing in understanding how and why people took the decisions they did in life – the idea being that it would pay off by helping people to make certain decisions more easily. The relevance of this analysis to the Eso world was clear because it was still proving difficult to raise participation levels, even in tax-approved employee share schemes.

Stuart used Star Trek's Mr Spock, the unemotional, logical *Vulcan* character who took all his decisions rationally, to contrast to human beings, who are not able to set emotions aside so easily. For example, most people were averse to loss and gave the consideration of potential gain less priority, said Stuart. "People undervalue future reward – they would rather have £1K now than £2K in two years time – they want immediate value," he explained.

In practice, the way plan sponsors described the choices employees could make in joining share plans led to different decisions. So this introduced the concept of 'nudging' whereby you weren't telling people what not to do, but nudging them in the desired direction.

Equatex had redesigned its employee share schemes portal to build up a better picture of employee participants – whether they felt confused about the plans and needed to learn more or whether they felt inefficient and needed to earn more, added Stuart.

MEMBERS

New Centre members

Covington, a leading multinational law firm, has joined the Centre. Covington handles many of the toughest and most significant transactional, regulatory and contentious assignments for the largest companies in the world. Its distinctively collaborative culture allows it to be one team globally, drawing on the diverse experience of lawyers and advisors across the firm by seamlessly sharing insight and expertise. Covington's global network and relationships expands its reach far beyond its office locations to help clients achieve goals throughout Asia, Europe, Africa, the Middle East, Latin America, and the US.

Covington's global employee benefits teams in London, Washington and Beijing advise clients on all aspects of employee share offers, from plan design, implementation and operation through to global compliance, tax and corporate transactions. They advise on all key related areas such as executive remuneration, employment, global mobility, data protection and remuneration regulation.

With more than three decades experience, the Washington team has worked on some of the largest and most complex Eso and retirement plans in the US, while its international team in the firm's London office handles clients' UK and global plans. For more info, please contact ex-Linklaters lawyer and Centre steering committee member **Rasmus Berglund** at: rberglund@cov.com (tel. +44 207 067 2139) who would be delighted to discuss how Covington can help you and your company.

RM2 rejoins the Centre

The Centre welcomes back into membership **RM2,** a 25-year old independent advisory firm specializing in employee share ownership for private companies. Led by industry veteran **Nigel Mason**, formerly of **Capital Strategies** and **Lloyds TSB Registrars** and a member of the Centre's steering committee, RM2 has 15 employees drawn from different professional backgrounds: solicitors, company secretaries, accountants and investment bankers. Other RM2 staff known to Centre members are **Sarah Anderson**, former protégé of *Graeme Nuttall*, **Robin Hartley**, formerly of PWC and Travers Smith and **Stuart Hale**, ex Mazars.

There are three main RM2 practice areas: design and implementation of employee share schemes, ongoing administration of share schemes and arranging change-of-control employee buyout transactions.

The change-of-control transactions are led by American ESOP expert **Garry Karch,** formerly of ESOP investment bank **Butcher Joseph**. Garry relocated to London from Chicago in January to join Nigel and the RM2 team in expanding the nascent market for Employee Ownership Trusts in the UK. RM2 focuses purely on the deal structuring and financing role, involving other law firms in the legal implementation. Nigel told *newspad*: "The Employee Ownership Trust is a flexible structure, brilliant for achieving long lasting employee ownership. The prospect of a tax-free sale is very attractive to business owners, who we need to be motivated to sell to employees if the sector is to grow as we would all like. The EOT can do everything that a management buyout could do, only better."

The RM2 Partnership is based in New Malden, Surrey, and can be contacted at:

020 8949 5522

MOVERS & SHAKERS

*Following the completion of its MBO three months ago, **Bedell Trust's** administration business has re-branded itself as **Ocorian**. Under the leadership of ceo Nick Cawley and the management team, Ocorian will continue the industry-leading and award-winning legacy built by Bedell Trust across its corporate, funds, private client and real estate service lines.

Mr Cawley explained: "Through the sustained growth and diversification of our business, we recognised the time was right to revitalise our corporate identity. Building upon our strong heritage, reputation and capabilities, the launch of our new brand is another exciting step in the evolution of our business." He added: "This is much more than a simple name change and logo makeover, indeed over several months we have been rigorously engaged with defining who we are and what we need to be in order to further enable the success of our clients."

Please note the new contact details of Centre contacts at Ocorian:

Paul Anderson: +44 (0)1534 507209 paul.anderson@ocorian.com; Grant Barbour: +44 (0) 1534 507343 grant.barbour@ocorian.com: Claire Drummond: +44 (0)1534 507171 claire.drummond@ocorian.com.

Its office address remains 26 New Street, St Helier, Jersey, JE2 3RA.

The fall-out from trustee re-organisation has given us exotic new company names – Barclays Trust was sold to investors to become **Zedra**; Appleby Fiduciaries has became **Estera,** launching its new branding at the Gherkin building in the City – and now we have Ocorian. For more info, see: **www.ocorian.com**

*Popular skier and Centre conference-goer **Mark Vanderpump** has decided to leave **Equiniti** at the end of the year. Mark, md Equinti share dealing, told newspad: "I have been in the City for 30 years of which 20 years have been spent in the share plan world the majority of which with Cazenove and the tail end with JPMorgan and Equiniti. "The time is right to enjoy a bit of a break and take in some skiing with a bit of travel booked in for the summer." You can still contact him for the next few weeks at his office: Tel +44 (0)20 7469 1958

***Centre member **Global Shares** – a leading provider of stock plan admin record keeping services, software -as-a-service and financial reporting tools has teamed up with **Fidelity Investments**®, the multinational financial services corporation. Clients of Global Shares' new equity compensation management platform will be able to work with Fidelity to provide dynamic participant servicing and brokerage solutions. This agreement will help transform the participant experience and extend the opportunity for integration with retirement plan services to more companies. Fidelity Investments and Global Shares will start engaging with prospects and clients immediately, to begin taking plans live in the spring of 2017. **Tim Houstoun, ceo Global Shares,** said: "We are delighted to team up with Fidelity Investments. Over the past decade Global Shares has become a major player in the global stock plan administration arena, with one million participants now using our platform in 100 countries globally. The strengths Global Shares brings to this strategic collaboration are our cutting-edge technology, full-service integrated platform and parameter-driven customization, which allow us to support any plan type, multiple rules and legacy requirements at any level. Our software has set a new benchmark in stock plan administration globally, simplifying the increasingly complex needs of employee and executive plan management. We have tremendous flexibility to tailor our solutions to the unique needs of Fidelity's clients, which makes this an especially powerful offering."

*The Centre's contact at **KPMG,** David Ellis, head of rewards, has left the firm. Our new point of contact is director **Chris Barnes** Chris.Barnes@KPMG.co.uk**.**

*****Partners at **CMS UK, Nabarro and** Centre member **Olswang** voted overwhelmingly to combine their firms and create the world's sixth largest law firm by lawyer head-count and the sixth largest in the UK by revenue. The merger is due to complete on May 1 next year**.** The new firm will trade as CMS, and the name of the UK firm will be **CMS Cameron McKenna Nabarro Olswang LLP**. It will claim leadership in six sectors: energy; financial institutions; infrastructure & project finance; life sciences and healthcare; real estate; and technology, media & telecommunications This merger creates a team of 2,500 lawyers in the UK within a global team of 4,500 lawyers, in 65 offices serving 36 countries. Olswang is an international law firm with an outstanding record in technology, media and telecommunications and IP, with a reputation in a wide range of other industries, from property and retail to life sciences and leisure.

*The **Office of Tax Simplification** announced that **Paul Morton** is to be its new tax director. His appointment will increase the ability of the OTS to build on its achievements in simplifying the tax system, said a Treasury spokesman.

UK CORNER

ESS axed by Chancellor Hammond

Former Chancellor George Osborne's controversial **Employee Shareholder Status (ESS)** scheme is being axed, his successor **Philip Hammond** announced in his parliamentary Autumn Statement.

Relief from Income Tax and CGT – for employee shareholder shares, known as *shares for rights* – in return for giving up certain statutory employment rights, such as not to be unfairly dismissed, was abolished for shares acquired on or after December 1 this year, reported Centre member **Bird & Bird.**

This follows Government concerns that ESS share schemes were being used mainly for tax planning by private equity firms, rather than by a mix of employees in line with the scheme's intended purpose of developing a more flexible workforce.

Legislation will be introduced in **Finance Bill 2017** to remove the income tax relief on the first £2,000 of ESS shares and their CGT exemption and provisions that prevent an employee being taxed on a distribution when a company buys back ESS shares.

However, ESS agreements made before December 1 are **not** affected, so Corporation Tax relief for the employer company and the tax free status of independent legal advice received by an employee will remain in force.

The proposed changes remove the majority of the tax benefits associated with ESS, but don't close the scheme down completely. However, the government said that it intends to legislate to close ESS to new entrants as soon as possible.

Only 230 key employees were awarded shares in the 40 companies which took advantage of ESS in the first six months of its life, HMRC's share scheme statistics department reported. It published only the take-up of ESS between September 1 2013, when it came into being and the end point of that financial year – April 5 2014, but has said nothing about the take-up level of subsequent ESS agreements up to December this year.

Nevertheless, during the first seven months, 55.8m shares were awarded, collectively, to the 230 employees, who agreed to surrender certain employment rights in order to qualify for the CGT free share awards. The restricted value of these shares was £2.5m in total, equivalent to £2.8m when free of restrictions, such as minimum holding period. This represents a mean market value of £11,800 worth of ESS shares per employee, said HMRC. A majority of these ESS awards went to directors and other key employees, rather than to rank-and-file employees, which undermined Mr Osborne's hopes that ESS would help UK productivity by encouraging participating employees to work harder, with the prospect of windfalls from future share price gains.

The Centre is only slightly nostalgic about the disappearance of ESS in the sense that it least it was something new on the statute book which concerned employee shares.

Bird & Bird said: "The abolition of *shares for rights* is likely to impact upon a number of companies – particularly those in the technology sector who used such arrangements to reward genuine commercial growth, whilst enjoying greater flexibility with regard to some employment protections and who do not satisfy the enterprise management incentive plan conditions.

"Companies in this position will need to take advice as they may find themselves without a Government-backed qualifying share plan and are likely to have to use growth share arrangements in the future as the next best alternative."

The House of Lords and many share scheme practitioners warned before ESS was ratified that its rules were open to abuse, as high-powered executives could easily surrender employment rights knowing full well that the company could restore them a year or two later. But, given that the **Enterprise Management Incentive** scheme was unavailable to many companies, ESS might partially have filled the gap. Now the Centre will resume pressure for an EMI lookalike for private equity.

Exclusive: share scheme statistics scrapped

Employee share scheme statistics for the 2014–15 financial year have been abandoned by the HMRC statistical division and will never be published, HMRC admitted to *newspad.*

As we revealed exclusively last month, HMRC was facing a huge IT problem over translating online share scheme returns into usable statistics and has now given up on that year after many months of delay.

Companies which operate employee share schemes or award employees with shares or securities last year had to wrestle with partly defective or tortuous templates and formats for making their mandatory online annual returns for the tax year 2014–15. Some of these problems have been put right by HMRC, but problems remain.

These annual statistics give the industry key information on the popularity of the four tax approved schemes, namely SAYE-Sharesave, the Share Incentive Plan (SIP), the Company Share Option Plan (CSOP) and the share options based scheme exclusively for the SME sector – the Enterprise Management Incentive (EMI).

Members of the share scheme industry will be shocked at this disclosure, as the statistical trends are often used by service providers as a useful guide over which type of share plans their future investment should focus on. Now they will have nothing to refer to beyond early 2014 – two and a half years ago.

HMRC told *newspad* that the next statistical share schemes update will be published in June next year and will cover the 2015–16 tax year, which ended on April 6.

An HMRC spokesperson said this: “We will not be producing the Employee Share Scheme National Statistics relating to the 2014–15 tax year, due to the data not being available. The next update based on the 2015–16 tax year will be published in June 2017.”

PM cracks down on executive reward

PM Theresa May outlined plans for a crackdown on top executives’ reward packages as her government said it sought to narrow the gap between average employees’ pay and executive reward levels.

The proposals, published in a three month BIS department consultative Green Paper, suggest setting up staff scrutiny committees, forcing firms to publish pay ratios between chief executive officers (ceos) and average employees, perhaps giving shareholders binding annual veto voting powers on executive reward.

In the wake of the BHS-Sir Philip Green scandal, it asked whether private companies should be subjected to some of the rules faced by companies listed on the stock market.

The Green Paper included proposals, first raised by fund manager **Hermes**, which could require companies to set out the maximum amount a ceo could earn. The paper asked if the current system of paying bosses though long-term incentive plans – share awards that pay out in three years – should be thrown out. It questioned whether executive reward deals should be based over three rather than five years.

Business Secretary Greg Clark said that employee voices could be represented too through non-executive directors.

The options/proposals at a glance: *Courtesy of the Telegraph*

Shareholders could get more power over executive pay

Companies could be forced to reveal the pay gap between bosses and average employees

More employee representation – but no mandatory board seats for employees

Existing governance rules could be applied to large privately-held companies

Rules could be compulsory or optional, depending on what response the government gets

Consultation will run until February

The paper provided several options in each area – including the annual binding vote, which it suggested could cover only part of a director’s reward packet, or when there had been significant protests about executive reward within a company in recent years. So binding votes might apply to all companies, or only to those that had “encountered significant shareholder opposition” to the remuneration report.

At present, shareholders have only a voting veto every three years over forward-looking company reward policy. Pressure groups and some City institutions say that there should be an annual binding shareholder vote over actual executive reward packages.

Another outside suggestion was diluted too – that Nordic-style shareholder committees should be set up to replace nominations committees and recommend the appointment and removal of directors. This would have obliged shareholders to become more active in setting pay, listening to outside voices and questioning strategy. Instead, the government has gone for ‘stakeholder advisory panels,’ which could mean anything.

The average reward received by FTSE 100 ceos has increased from 47 times that of the average employee in 1998 to 128 times last year.

There was disappointment in some quarters that Mrs May hadn't followed through with her pledge last summer to have employees on boards. This was in the aftermath of the Brexit vote which, many said, had been sparked by resentment over the ever-growing north-south wealth gap.

The Centre welcomed Theresa May's plans to curb the excesses of executive reward but urged the government to do more to improve corporate governance and to reduce income inequality. Responding to the Green Paper, Centre chairman **Malcolm Hurlston** said that shareholders should work with Mrs May and focus the attention of those at the top to the entire workforce. "Shareholders need to take up the cudgels as well as government, since it is at their expense that top pay has risen," he said. "Employee shareholders have the same interests as all small shareholders. Employees should be represented throughout the company structure, not primarily on boards where they are more exposed to capture.

"The government needs to encourage companies to grant options liberally, using the tax efficient Company Share Ownership Plan. That is the best way to ensure that people who are just about managing – the so-called JAMs – share in success too."

UK business leaders, backed by the Bank of England, challenged Mrs May's calls to restrict executive reward. The **Purposeful Company Taskforce** is recommending pay policies that encourage long-term performance, but not binding votes on executive reward levels.

"Often the problem in the past has been that the shareholders haven't had the power, or in some cases the inclination, to actually protest or to say we don't find this acceptable," said **Work & Pensions Secretary Damian Green**. "These proposals will give that power to shareholders.

HMRC probes £1bn worth of potential tax tied up in avoidance schemes

HMRC is investigating potential tax recuperation from high net worth UK individuals of £1.9bn, of which £1.1bn concerns the use of marketed avoidance schemes, as around 15 percent of high net worth individuals have used at least one scheme. HMRC said that the 'risks' from high net worth individuals relate primarily to tax avoidance and the legal interpretation of complex tax issues, rather than tax evasion.

For example, it is on the point of issuing APNs to several hundred soccer stars and show biz celebrities who invested in a film industry support scheme which involved wholly or partially tax-free wrappers. The scheme has been struck down by the courts following HMRC objections and very substantial demands for unpaid back tax are in the post.

In 2014–15, high net worth individuals paid more than £4.3 bn in tax. This included £3.5bn in income tax and NI (1.3 percent of the total revenue for those taxes) and £880m in Capital Gains Tax (15 percent of all CGT).

HMRC is running a formal enquiry on one third of high net worth taxpayers, with an average of four issues being examined per taxpayer. Formal enquiries occur where HMRC does not understand or agree with the position taken by a taxpayer. These enquiries can take a long time to resolve with 6,000 issues under enquiry open for more than 18 months, *4,000 of which have been open for more than three years.*

HMRC recorded yield of £416m in 2015–16 from the work of the high net worth unit, a yield which has more than doubled since 2011–12.

In addition to the work of the high net worth unit, since 2009 HMRC has recorded yield from high net worth individuals of around £450m. Around half of this – £230m – came out of its work in tackling marketed avoidance schemes; a further £80m out of fraud investigations and £140m from the use of offshore disclosure facilities (e.g. the Liechtenstein disclosure facility).

In the last five years, HMRC has investigated and closed 72 cases concerning high net worth individuals. 70 of these were investigated with civil powers, raising £80m in compliance yield including penalties. During October this year, HMRC was investigating a further 10 high net worth individuals.

Government to help Eso soon?

Will the government act shortly to pep up the UK share scheme industry? One man who thinks that this may happen is remuneration consultant **Patrick Neave**, late of **ABI** and **IA** vintage. He told *newspad:* "I continue to take an active interest in the executive pay debate, helping **Meis** compensation data services and have been in contact with a number of former colleagues including **Peter Montagnon**.

"This debate would appear to be heading to a new territory with the **Business, Energy and Industrial Strategy Select Committee** taking evidence and the likelihood of further Government announcements. From what I have seen of the submissions, some of the input has given encouragement towards employee participation in share schemes, viz the following comments:

"Employees should also share in value creation and have a stake in the success/failure of the business. Companies should encourage greater use of employee -based share plans."

"We suggest a review of the role of policy in encouraging share save and profit participation schemes for all employees would be worthwhile."

Brexit

***Bank of England** governor, **Mark Carney**, said that the UK's future trading relations in financial services with the EU could be a template for a global regulatory system. Carney said he expects the EU to give "serious consideration" to *equivalence* with the UK, given that the country will already be compliant with European rules and that this "is the way forward for the global financial system". He admitted that some business will migrate in response to suggestions that clearing in euro-denominated derivatives could shift from London, but that it was debatable whether all derivatives activity would follow shifts in clearing and that there was no need for clearing to take place in the jurisdiction of an asset's currency. In the meantime, however, **Mark Garnier,** UK trade minister, said that passporting is unlikely to continue after the UK leaves the EU and that equivalence was probably not going to be "good enough" for banks. *Source: Cummings Law.*

*For offshore funds and their managers, the period of uncertainty over what Brexit means for them seems set to continue for a long while yet. There is however a growing sense among investment managers of offshore funds in London that, whatever the outcome of the Brexit negotiations with the rest of Europe, a solution will be found to allow managers to keep calm and stay put. Increasing numbers of alternative structures are being considered, including keeping an existing UK **FCA** regulated investment manager and using an AIFM platform in eg Luxembourg or Ireland, or setting up a management company in another EU jurisdiction, such as Luxembourg, which could then delegate or outsource various functions back to the UK. Other parts of the UK financial services industry, including much of the banking industry, are more heavily reliant on passporting rights under the relevant European legislation, so moving parts of their operations out of the UK is being considered seriously by them. It's difficult for anyone to finalise a plan at the moment though when no-one can know at this stage what post-Brexit UK will actually look like. *Source: Harneys.*

*If the UK exits the EU at the end of the Article 50 process without a free trade agreement with the EU in place, trade between the UK and the EU will have to rely on WTO rules, at least until a comprehensive free trade agreement is in place. Without a formal agreement between the UK and the EU, which could include an interim agreement, it will not be possible to maintain the *status quo* of tariff free trade in goods and freedom of establishment within the single market. This is because the EU, its member states and the UK[1] will all be subject to WTO rules post-Brexit.

A key feature of WTO rules is the most favoured nation (MFN) principle. MFN treatment means that usually one WTO member cannot offer treatment to another WTO member which is more preferential than the treatment it offers to other WTO members. Therefore, if either the UK or the EU wished to preserve tariff free trade in goods or freedom of establishment with the other for an interim period post -Brexit with no formal interim agreement in place, then the EU and UK would have to offer tariff free trade and freedom of establishment to every other WTO Member. There are currently 164 member states, with Iran being a notable exception.

The current WTO Agreements cover a wide range of issues including tariffs; trade in services; intellectual property; technical barriers to trade, investment; rules of origin, and trade defence mechanisms, for example anti-dumping duties. In addition, 'Understandings' which provide clarification on certain WTO rules are also annexed to the WTO Agreement. WTO rules cover the 'Trade Policy Review Mechanism' which provides for the surveillance of WTO Members' trade policies, and encourages transparency. WTO rules are enforced through litigation in the WTO's Dispute Settlement Body (DSB). If trade between the UK and the EU takes place according to WTO rules, then companies involved in the trade of goods between the UK and the EU could face, amongst other things:

Increased tariffs, which may affect UK importers and exporters generally if the UK loses the benefit of the EU's preferential trade agreements with third countries.

Increased customs formalities, which may lead to delay and increased costs. All UK importers and exporters, especially those that rely on 'just in time' deliveries, should be aware of this, as trade between the UK and non-EU countries that involves transhipment of goods through a European hub port may become more difficult and time-consuming.

Increased difficulties in establishing the origin of products. A product may currently be made from materials produced in a number of EU Member States and assembled in the UK. The origin of the product would currently be the EU, but following Brexit it might not be clear whether the origin of the product is the UK or the EU, which could affect how it would be treated when exported.

A potential need to comply with two different sets of regulatory standards in the UK and the EU**.** This may not be a big issue for most products, where both the UK and EU are likely to follow established international standards, but the interpretation of standards by local authorities could prove problematic.

In addition, a key consideration for companies in the financial services and insurance sectors is that they would no longer be able to rely on passporting rights when providing cross-border services between the UK and the EU.

It is possible that a post-Brexit interim agreement and/ or sector specific single market access arrangements will be put in place until a comprehensive EU-UK preferential trade agreement enters into force. However, companies that are involved in cross-border trade between the EU and the UK should consider their options and make contingency plans so that they are not unduly affected if the worst-case scenario happens. Source: *Holman Fenwick Willan*

WORLD NEWSPAD

European Union

*The European Council (of Ministers) agreed on the criteria and the process for the establishment of an EU list of non-cooperative tax havens. It adopted conclusions on: • criteria for the screening of third country taxation jurisdictions; • guidelines on the process for selecting and screening jurisdictions. The Council did not agree that jurisdictions that impose a nil rate of corporation tax should be included on the list automatically, but agreed that this would be considered in the screening process when the code of conduct group evaluates zero or no tax rates as possible indicators that offshore tax avoidance structures are being facilitated.

Jersey and Guernsey have a joint Brussels office and the UK government is among the member states supporting them. At a recent meeting of EU finance ministers in Brussels, **David Gauke, Chief Secretary to the Treasury**, told his counterparts that the UK opposes simplistic attempts to put territories with a zero rate of corporation tax on an EU list of 'non-cooperative' jurisdictions.

The EU vowed to draw up a blacklist of tax havens following the revelations in the Panama Papers, an unprecedented leak of 11.5m files from the database of the world's fourth-biggest offshore law firm, **Mossack Fonseca**.

Crown dependencies Jersey, Guernsey and the Isle of Man, as well as British overseas territories Bermuda and the Cayman Islands, are among the jurisdictions that have a zero rate of corporation tax, according to the European Commission, in an analysis of risk factors intended to show whether a jurisdiction may be promoting tax avoidance. The Commission has been leading the charge for greater transparency on tax havens and wants to draw up a list of 'non-cooperative jurisdictions' by the end of next year.

Brussels officials think that a zero or near-zero rate of corporation tax in a non-EU country should be a red flag for 'unfair taxation.' But EU member states are split on whether zero corporate tax rates should count in the criteria for determining whether a country is a 'non-cooperative jurisdiction.' Not only the UK, but also Ireland, Sweden, the Baltic States, the Netherlands and Luxembourg are blocking a plan to put jurisdictions with a zero or almost zero rate on the blacklist. This "Nordic" group argues that the EU has no right to penalise outside jurisdictions for setting zero rates because corporate tax is not an EU competence. In contrast, Germany, France and the "Club Med" members think zero rates should automatically mean a country is deemed 'unfair' on taxation and goes on to the blacklist.

London's support for delay has caused anger, because the UK may have left the EU before the rules would come into effect – if implementation were left until 2020. However, screening is due to be completed by September 2017, so that the Council *could* endorse the list of non-cooperative jurisdictions by the end of next year. Screening is intended to be a continuous and regular process. Further details of the criteria and the process are at: http://deloi.tt/2fyixRm

"This agreement between all member states is an essential part of our joint EU strategy to combat global challenges such as tax base erosion and profit shifting," said **Peter Kažimír,** Slovak minister for finance and president of the Council. "This is a first crucial step in the process that will take place throughout 2017", he added. "A dialogue will start with those countries that fail to comply with the criteria we have established and only those jurisdictions refusing to co-operate will be placed on the so-called blacklist. Our primary goal is to incentivise, not to punish."

*The Council agreed too on a proposal granting tax authorities access to information held by authorities responsible for the prevention of money laundering. This is one of the measures set out by the Commission in July 2016 in the wake of the so-called 'Panama Papers' revelations. The Directive will require member states to enable access to information on the beneficial ownership of companies. It will apply as from January 1 2018. See http://deloi.tt/2eLsvQK

COMPANIES

Deutsche Bank, Europe's biggest investment bank, is exploring alternatives to paying bonuses in cash, as ceo John Cryan seeks to boost capital buffers and shore up investor confidence, according to internal sources. Executives at the German lender have informally discussed options including giving some bankers shares in the non-core unit instead of cash bonuses. Another idea under review is replacing the cash component with more Deutsche Bank stock, they said. "This is something they can try, but they would probably have to expect some resistance from staff," said Andreas Plaesier, an analyst at MM Warburg in Hamburg. "Still, it can be a good way to bind employees to the company." The measures, if pursued in the coming months, would mostly affect the investment bank.

The executive remuneration system is seriously discredited and needs substantial reform, said the **Institute of Business Ethics (IBE)**. It said that cash should be restored as the essential currency of paying executives, instead of share options, performance share awards, deferred awards etc. The law should be changed to forbid payments that cannot be valued properly at the time of award, said the IBE. Salaries would go up, naturally, but the institute proposed a few sub-clauses: First, executives would have to spend an agreed portion of their higher salaries on the company's shares and then hold that stock for years, even beyond retirement. Second, any salary increase or cash bonus wouldn't become effective until shareholders had voted. Thirdly, if the executives still wanted big cash bonuses (more than 25 percent of salary), they'd have to give the same award, proportionally, to all employees, to make it fair. That way, executives would build up a shareholding in their employer over time and receive dividends on those shares, which should encourage more long-term thinking in boardrooms. Bonuses would become a side-show. Shareholders would be directly on the hook for what executives are paid. The public might not like the notion that a FTSE 100 ceo's £1m-a-year base salary could become £2m-a-year or more once the share-based carrots are scrapped. However, the virtues of the system would be simplicity and transparency, which some say are woefully under-supplied."

Frontier Developments, a leading AIM listed developer of video games, was notified by **Estera Trust (Jersey) Ltd**, the trustee of the Frontier Developments Esop Trust, that the EBT transferred 12,000 shares to cover employee share option awards at an exercise price of 0.89 pence per ord share. Following this transaction, the EBT holds 218,400 ords, representing 0.6 percent of the company's total issued share capital. The executive directors of the company are included in the class of potential beneficiaries of the EBT.

***France:** EUROPCAR has decided to initiate a share capital increase benefiting the members of the EUROPCAR's group savings plan (the *Plan d'Épargne Groupe*) or the EUROPCAR's international group savings plan. EUROPCAR has a share capital of €uros143.4m and its shares trade on the Euronext Paris market.

*__Ireland__: In the Financial Statement for Budget 2017, the Minister for Finance, Michael Noonan, announced his plan to develop a new share based incentive scheme focused on Irish SMEs. The new scheme is to be introduced in Budget 2018 and it will require the approval of the European Commission to comply with state aid rules, said lawyers *L.K.Shields*.

There are no details yet of how the scheme will be structured and when it will become operative. This follows a recent public consultation process on the tax treatment of share-based remuneration and the publication of the Department of Finance's tax strategy group's paper on taxation of share based remuneration. The current Irish tax system for share based remuneration imposes considerable restrictions on small and medium sized businesses (SMEs) in attracting and retaining highly skilled workers, including:

*Tax becomes payable shortly after the exercise of share options, but generally employees do not have the resources to fund the tax and exercise price, as there is no market for the shares in an unquoted company.

*There are increased rates of CGT from 20 percent to 33 percent that may apply on the disposal of shares.

*The current Revenue approved share scheme arrangements are inflexible, in that these schemes must be made available to all employees on similar terms rather than to key employees only.

The Minister hinted that the new scheme will focus on SMEs and the proposals may include a postponement of the tax charge on the acquisition of shares in an unquoted company, as the current tax treatment is a significant impediment to the operation of share option schemes.

***US:** The **New York State Department of Financial Services (DFS**) issued guidance to regulated banking institutions prohibiting them from implementing incentive-based compensation programmes unless they are accompanied by appropriate mechanisms designed to prevent employees from engaging in over-reaching actions that ultimately harm consumers.

The DFS guidance letter is clear that banks are not, by default, barred from implementing incentive programmes tied to sales targets or cross-selling. However, they are barred from implementing incentive programs if they do not implement effective risk management, oversight and control. Without ensuring that employee incentives to cross-sell or meet sales targets are mediated through appropriate controls, banks would open themselves up to fines, other penalties and lawsuits.

DFS did not provide any clear directives on how banks should manage their incentive compensation programmes. Instead, it provided broad principles that institutions should use as guidance when structuring and monitoring their programmes. In its letter, DFS said that it would conduct supervisory review of incentive compensation arrangements during its regular risk-focused examination process, including the ways in which a finance house monitors and implements incentive programmes. Additionally, DFS expects Institutions to maintain records that document the structure and approval process of their incentive compensation arrangements. Source: US lawyers *Sutherland, Asbill & Bennan LLP*

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