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it's our business

newspad of the Employee Share Ownership Centre

Tax decision reached on Roadchef employee shareholders

Newspad understands that, finally, HMRC has reached a decision about the amount of tax it will levy on the still awaited compensation awards to the 600 original Roadchef employee shareholders and to thousands more who have worked for it since 1998.

However, final distribution of the compensation pot to the aggrieved employee shareholders may be delayed further because the court-appointed trustee apparently still has some court ordered tasks to complete.

HMRC has brushed aside the Centre's repeated requests for transparency regarding the way in which it is dealing with the tax issues of this complex compensation case, especially CGT liability, claiming that it cannot comment on individual cases.

The compensation battle, even lengthier than the compensation scandal over the Equitable Life victims, stretches back to when motorway service station chain Roadchef was sold in 1998 by former pheasant plucker, Tim Ingram Hill, to Japanese investors.

All qualifying staff at Roadchef were set to benefit after their former md Patrick Gee, who had led the 1983 MBO of the company, decided to give them about 20 percent of its shares in the mid-1980s. However, Gee 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 percent of the equity – reserved for them on an equal basis. Gee's estate later gifted more shares to staff. By 1991 the Gee family had 23.2 percent of the equity, Ingram Hill had 21.5 percent, top managers had 15 percent and Roadchef staff, either directly or through the ESOP, had more than 34 percent**.**

However, seven years on, when Ingram Hill sold Roadchef, the ownership had changed. He then controlled more than 60 percent of the equity and the staff's share was down to below five percent.

The trustee's claim, on behalf of the employee beneficiaries, queried the 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 only. 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 over the years, including as md, chairman and ceo.

Ingram-Hill, who had run Travellers Fare cafes at London's main-line railway stations, and who became Roadchef's ceo, reportedly gained more than £85m from his by then personal Roadchef shareholding, though his net gain was substantially reduced by a large tax bill.

Former employees like *M*, who worked for Roadchef in a motorway service station for nine years, have waited for almost **20 years** to learn when they would get compensation for the value of their employee shares, which were removed from them by Ingram-Hill, *without their knowledge,* before Roadchef was sold.

She is among a determined band of ex Roadchef employee shareholders who are updating *newspad* on developments in the seemingly interminable fight for justice. Their help is invaluable because court-imposed gagging orders about the nature of the proposed

From the Chairman

Malcolm Hurlston CBE

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Roadchef settlement have prevented the employee shareholders and the public at large from finding out what has been going on behind the scenes.

Our latest informant told newspad: *"This has gone on for far, far too long and needs to be settled now. We're all so fed up about being kept in the dark – everything is confidential.*

"*I've had letters from lawyers on and off for the past 17 years – more and more money is coming out of the compensation pot to pay the lawyers*

"I've still got my share certificates but when will I see any value from them?

"I'm told HMRC has finally reached a decision about the tax due from beneficiaries – whenever they get their compensation.

"However, the trustee still has court-ordered tasks to complete before any distribution can take place – what on earth has the trustee been doing over the past three years?

"We the original 600 employee shareholders should be given priority in the distribution – we should be paid our compensation first."

As *newspad* revealed several months ago, the criteria governing the proposed division of the agreed compensation sum seem bizarre, to say the least:

- *Qualifying employees (the 600) who were members of the Roadchef Esop up until 1998 are to get 61 percent of the net compensation collectively*
- *Non-qualifying original employees (those who either refused to join the Esop, or who were ineligible) are entitled to a further nine percent*
- *Lastly, an astonishing 30 percent of the compensation pot is earmarked for more recent employees, thought to number around 3000 –* **those who were never participants in the Esop!**

As yet no-one involved in this unedifying case is prepared to explain on record why more recent Roadchef employees should qualify for any compensation at all. There is a suspicion, however, that the original Esop trust documents, which brought the scheme into being, were not as precise in identifying the beneficiaries as they might have been.

The case, brought by the Esop trustee, ended in the High Court more than three years ago when Mrs Justice Proudman ruled that: "A transfer of shares from one EBT to another 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) (January 29 2014).*

"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 trustees' lawyers, **Capital Law,** said in a statement at that time.

However, it took another year before Ingram Hill agreed an out of court settlement, believed to amount to more than £23m. There is no suggestion that Mr Ingram Hill broke any law by transferring employee shares from one trust to another set up by him.

It had taken well over a decade to get Ingram Hill in court because the trustee had no money with which to launch the compensation case on behalf of the Roadchef employee shareholders. A change in the law allowed the Roadchef EBT trustee to bring in **Harbour,** a litigation funding company, which agreed to fund the case in court. Its fees for doing so have been substantial.

It is believed that Ingram-Hill paid the agreed compensation sum more than 18 months ago. Presumably, that sum is still in an escrow account.

Key questions about the Roadchef Esop disaster rest unanswered:

- Why in the event of malpractice or negligence by a director and/or a trustee should it be so difficult to protect the interests of employee shareholders, in court if necessary?
- Why is there no regulatory body specifically tasked with the protection of employee shareholders in ownership disputes, or corporate malpractice?
- Why should a judge's ruling banning leading participants - in court hearings over misappropriated shares - from commenting on settlements be allowed to remain in force for years on end?

Years later Nikko off-loaded Roadchef to an Israeli conglomerate **Delek Group,** which in turn sold it on to European fund **Antin Infrastructure Partners**, the current owners.

HMRC has confirmed that the long-awaited official statistics on UK tax-advantaged employee share schemes for the 2015 to 2016 tax year will be published on **June 30**.

The statistics will include information on companies using SAYE-Sharesave; the Share Incentive Plan (SIP); the Company Share Option Plan (CSOP) and the Enterprise Management Incentive (EMI). The tables cover the value of awards and exercises and the estimated value of Income Tax and National Insurance relief received. In an unprecedented move, HMRC was forced to abandon planned publication of the statistics for the 2014-15 tax year due to prolonged IT problems linked to the start of compulsory online share scheme reporting.

Labour manifesto threat to Eso

A **Labour** government would severely damage all-employee share ownership (Eso) by scrapping the UK's largest Eso scheme. This was revealed in Labour's General Election manifesto which said that – if in power - it would renationalise the Royal Mail, which was privatised by the Coalition government in October 2013, creating 145,000 new employee shareholders.

However, renationalisation automatically would mean

the end of all employee share ownership in RM, despite the on-going popularity of holding employee shares among the huge mass of postal workers. Not only did the 'posties' accept their free individual Share Incentive Plan share allocations, but 35,000 of them - almost 25 percent - went on to join RM's subsequent SAYE-Sharesave launch, which involves them paying monthly contributions into savings contracts.

In addition, Labour pledged that it would double the size of the **co-operative sector** but did not say whether that shift to co-operatives would involve any employee shares.

Labour's manifesto said: "The Conservative Government's privatisation of Royal Mail was a historic mistake, selling off another national asset on the cheap. Across the world, countries are taking public utilities back into public ownership. Labour will learn from these experiences and bring key utilities back into public ownership to deliver lower prices, more accountability and a more sustainable economy. We will reverse the privatisation of the Royal Mail at the earliest opportunity

"In government, Labour would give more people a stake – and a say – in our economy by doubling the size of the co-operative sector and introducing a **"right to own**," making employees the buyer of first refusal when the company they work for is_up for sale. We will bring forward legislation to create a proper legal definition for co-operative ownership."

Only the **Liberal-Democrats,** in the manifestos of the three mainstream political parties, had any specific promises aimed at increasing the impact and reach of Eso. The urgent need to promote the growth of all-employee share ownership, highlighted by the imminent train-crash in UK occupational pensions (*see next story)*, was ignored in the manifestos of both the Tory and Labour parties.

The **Lib-Dem** manifesto said: "Too many people justifiably feel left behind. Liberal Democrats believe that it is vital that everyone is given a stake in our economy, that we can only be united and competitive as a country if the rewards are reaped by all.

A well-functioning economy which works for everyone cannot be based solely on companies owned by and operated on behalf of small groups of shareholders. It should seek to foster a diversity of types of business, including encouraging alternative models such as mutuals, social enterprises or community-interest companies. In all cases, it is vital to ensure the engagement and involvement of employees; successful businesses work for all stakeholders.

"That is why we will:

- **Encourage employers to promote employee ownership by giving staff in listed companies with more than 250 employees a right to request shares, to be held in trust for the benefit of employees.**
- Strengthen worker participation in decision-making, including staff representation on remuneration committees, and the right for employees of a listed company to be represented on the board. We will change company law to permit a German style two-tier board structure to include employees."

There is no doubt that an employee right to request shares (in companies which do not yet have Eso schemes) would increase UK employee share ownership over the medium and long-term, even though business owners would not be *obliged* to set up such schemes.

However, the *right to request* shares pledge is nothing new, for during the Coalition government from 2010-15, a statutory employee *Right to Request* consideration by the company of setting up 'employee ownership' schemes was a key proposal of the Nuttall Review, written by leading Centre member **Graeme Nuttall OBE**, partner at employee ownership lawyers **Fieldfisher,** for the **Department for Business, Innovation & Skills (BIS)**. His recommendations were backed by the Business Secretary Vince Cable but, in the event, the statutory right proposal did not become law.

A Lib-Dem government would facilitate employee representation on remuneration committees and representation on the board of listed companies. Larger employers would be required to publish the ratio between top and median pay and to limit the spread of zero hours contracts, a formal right for employees to request a fixed contract would be introduced.

Theresa May's '*One Nation'* ideological grip on future Tory government policy was much in evidence in the **Tory** manifesto. The tone of it was a million miles away from the Thatcher era, as the PM carved out her vision of a '*more socially just'* nation. Parts of it – especially workers' 'rights' - sounded somewhat similar to the sort of things former Labour leader Ed Miliband was saying seven years ago. Curiously, her manifesto did not even mention employee share ownership.

On **'Fair corporate pay,'** the Tory manifesto said: **"***We believe people should be rewarded for their talents and efforts but the public is rightly affronted by the remuneration of some corporate leaders. Senior corporate pay has risen far faster than corporate performance and the gap between those paid most and those paid least has grown from 47:1 in 1998 to 128:1 in 2015. The next Conservative government will legislate to make executive pay packages subject to strict annual votes by shareholders and listed companies will have to publish the ratio of executive pay to broader UK workforce pay. Companies will have to explain their pay policies, particularly complex incentive schemes, better. We will commission an examination of the use of share buybacks, with a view to ensuring these cannot be*

used artificially to hit performance targets and inflate executive pay."

Listed companies would be forced to publish pay ratios and put top executives' reward packages to "strict" annual votes, the Conservatives pledged as part of a crackdown on corporate governance in British business.

Companies currently give investors an annual, non-binding advisory vote, which firms can ignore, on the reward they handed to executives the previous year and binding votes on their broader three-year remuneration policies when they are renewed. Some in the City have resisted the idea of introducing binding votes every year because this could lead to equity bonuses being clawed back, which would cause uncertainty for senior executives and so might deter top talent from running British companies. A Tory spokesman could not clarify if the proposal to legislate for "strict" yearly votes meant binding votes, saying: "This is something we are consulting on".

As for '*Workers on Boards'*: The Tory manifesto said: "The law will be changed to force listed companies to represent employees' interests on their boards. This will take the form of either a director nominated by staff, the creation of an employee advisory council, or by mandating a non-executive to represent workers."

The Government published a Green Paper last November aimed at reforming corporate governance, which has become a focus for politicians in the wake of the collapse of high street retailer BHS. Many of the manifesto promises, including the move to publish the ratio of executive to average workers' pay, were floated in the Green Paper. Separately, the manifesto said that, if elected, the Conservatives would consult on how to strengthen the **corporate governance** of *privately-owned* businesses, which some viewed as a watering down of past threats to place large private companies on the same footing as public ones.

Centre member **Clifford Chance** summarised the rival proposals:

Tories:

- A new right to be introduced for employees to request information about the future direction of the company subject to sensible safeguards.
- The recently implemented gender pay gap reporting (GPG) regime will be beefed up to require the publication of additional data on the pay gap applying to different levels and grades of staff. This clearly has the potential to make it much easier for employees to identify whether colleagues performing the same role, or a role of equal value, are being paid at the same rate for the purposes of assessing whether there are grounds for an equal pay claim.
- An increase in the number of women sitting on boards will be promoted. It is unclear whether a carrot and/or stick approach would be adopted.
- New reporting obligations on pay gaps across ethnic groups within the workforce; these will presumably mirror the existing GPG reporting regime.
- *National Minimum Wage*: the Living Wage will continue to be increased, to 60 percent of median earnings by 2020; thereafter it will be increased by the rate of median earnings. The Living Wage is currently £7.05 an hour and is applicable to workers aged 25 and above.
- The public had been "rightly affronted" by the generous remuneration packages paid to some top bosses, Mrs May said. However, she stopped short of announcing plans to outlaw complex share schemes, but said companies will have to explain them more clearly. Returns could instead be curbed by new rules to stop senior executives hitting their targets through share buybacks that artificially boosted stock prices and payouts to management. Shareholder power would be increased under a new Tory government. Remuneration packages would be subject to "strict" annual votes, their manifesto said, but it did not say whether the proposals would mean a binding annual vote on pay policy or that the existing annual advisory votes on remuneration reports would become binding.
- Better corporate governance**:** "Boards should take account of the interests not just of shareholders but employees, suppliers and the wider community. To ensure employees' interests are represented at board level, we will change the law to ensure that listed companies will be required to *nominate a director from the workforce, or create a formal employee advisory council, or assign specific responsibility for employee representation to a designated non-executive director*. These strengthened arrangements will apply to publicly-listed companies. We will consult on how we might strengthen the corporate governance of privately-owned businesses," it added.

The Investment Association (IA), which represents most of the City's big institutional shareholders, warned against the Tory plans. It called for a 'sin bin' approach, in which companies facing shareholder opposition to their executive pay would have to hold a binding vote if more than a quarter protested at their agm. Andrew Ninian, the IA's head of governance, said: "We want to see the introduction of an escalation approach." Carolyn Fairbairn, from the **Confederation of British Industry**, echoed the concern. She said: "The next government's intentions on executive pay would be best served by developing the existing regime to focus stricter votes on those cases that warrant greater attention."

Mrs May announced plans to intervene more in **takeovers**, citing concern over deals driven by "aggressive asset-stripping or tax avoidance". She said changes will be carefully considered, but did commit to new hurdles for bidders for British companies. They will have to be clear about their intentions for the target company and any undertakings they make will automatically be legally binding. Under the current regime, bidders are able to make legally binding

commitments, as Softbank did last year in its £24.3bn takeover of the microchip designer ARM. However, the informal pledges on jobs and investment made by 21st Century Fox in its planned takeover of the pay-tv giant Sky cannot be legally enforced. Pensions authorities will get a stronger voice in takeover scrutiny, too. The plans triggered fears foreign investors would be deterred. Ms Fairbairn called for any changes to be based on economic evidence. A Tory government would take powers to block more foreign takeovers on national security grounds, with energy, defence and telecoms deals due to face greater scrutiny. Mrs May said she would not hesitate to intervene in sectors where the public interest demands it.

The Institute of Directors warned her to "remember the limitations of government", raising concern over new curbs on skilled migrants. DG Stephen Martin said: "There has to be a balance between sensible reform and the risk of hampering a company's ability to make nimble commercial decisions. Similarly, interventions in the labour market must be handled delicately, with trade-offs for businesses." There was comfort in the manifesto for businesses fearing a Brexit cliff-edge. Mrs May promised a "smooth and orderly" departure from the EU.

Labour's manifesto promised:

- **Maximum Pay ratios**: a maximum pay ratio of 20:1 to be introduced both in the public sector and in private sector companies bidding for public contracts.
- **Takeover Code:** to be amended to require every takeover proposal to have a clear plan to outline pensioner and worker protection.
- **Public contracts** will only be awarded to companies that recognise trade unions.

Pensions crisis worsens

Hundreds of thousands of **BT** pensioners may see their retirement pots capped as the telecoms giant struggles to fill a huge black hole in its £50bn fund. BT is appealing to the fund's trustees and telecoms unions to agree to end accruals in its defined-benefits (final salary) pension scheme. It has more than 300,000 members and is the UK's largest private-sector retirement fund. The scheme was closed to new entrants in 2001 and since then, incoming employees have gone straight onto its money-purchase pension plan, but existing pre 2001 members are still building up benefits that BT fears are becoming increasingly unaffordable and threatening its ability to invest in broadband upgrades. BT has begun informal talks to try to stop the bill rising further.

The combined final-salary pension deficit of the UK's 350 largest listed companies more than trebled in 2016, to reach **£137bn**, despite the stock market ending the year on a high, according to retirement consultancy Mercer. Servicing big liabilities can turn companies into zombies. In many cases, normal corporate development and day-to-day investment is shelved to free up precious spare cash just to service large pension holes.

The Tories have promised – if they win the election - to provide new powers to the **Pensions Regulator** to issue "punitive" fines for those found to have 'wilfully left a pension scheme under-resourced' and, if necessary, powers similar to those held by the Insolvency Service to disqualify the relevant company directors. Pension regulations already require trustees to consider whether future accruals and deficit repayment plans could threaten a company's financial health. Many blue-chip companies have sought to reduce their pension burden in recent years. M&S closed its final salary pension scheme to future accruals last year. HSBC made the change in 2013.

BT is expected to argue that continuing to build up pensions for older employees that are already significantly more generous than those available to younger members would be unfair. At the last valuation, BT's scheme had a shortfall of £7bn. The company has agreed top-up payments of up to £500m a year until 2030 to plug the gap. A new valuation is due to be carried out in July. Rock-bottom interest rates and an ageing membership may have increased the deficit to £13bn.

EVENTS

All aboard for Paris summit, June 15 & 16, 2017

This is your last chance to register for the inaugural *newspad* summit which takes place in the offices of global legal group **Clifford Chance** in central Paris on **Thursday/Friday June 15–16,** this year.

Forty registrations have been received so far and **you can join them simply by emailing us at** global@esopcentre.com **giving the name of your delegate(s).**

The new two-day event presents a forum for leading players to:

*discuss the implications of recent legal, regulatory, tax and technical developments and long-term trends in international employee share plans

*examine major changes in recent executive equity incentive schemes

*discuss informally with French counterparts how UK based international employee share plans can best operate within the EU and vice-versa, post Brexit

Expert speakers include: Sian Halcrow of **Aon Hewitt**; Sonia Gilbert & Anne Lemercier of **Clifford Chance**; Richard Nelson of **Cytec Solutions**; Louise Jenkins of **FTI Consulting**; 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**; Jacqueline Vidales, who will run a Q & A session about Eso in her CAC40 company **Sodexo;** Nicholas Greenacre of **White & Case,** Damien Carnell of **Willis Towers Watson** and Marco Cilento adviser on Eso to the European Trade Union Confederation. **FONDACT** chairman, Michel Bon, former president of **France Telecom** and of supermarket group **Carrefour,** will deliver a key speech on employee share ownership in France**.**

The timed programme, with topic descriptions, along with **info about medium priced hotels close to our venue** is available in the event e-brochure, sponsored by trustee member **Ocorian**. Download from Centre website www.esopcentre.com

Our 10.15 am start on Thursday may permit you to travel to Paris early on Thursday morning.

newspad offers the following registration rates:

Practitioner members: **£395**

Practitioners non-members: **£525**

Plan issuers: FREE

These fees are not subject to VAT, as the event takes place outside the UK.

Registration entitles all attendees to:

- Take part in all conference sessions
- Buffet lunch and refreshments during coffee breaks
- Programme with access to speech summaries
- Cocktail party, hosted by Clifford Chance, starting c. 1745 pm, June 15

To register as a delegate, please email *newspad* editor Fred Hackworth at global@esopcentre.com or call 020 7239 4971.

The **World Centre for Employee Ownership Awards** recognise excellence in broad-based employee share ownership across the globe. This year's winners will be announced during a black-tie gala reception dinner at the **Reform Club** in London on **Tuesday, October 31**.

Nominations are now open and the award categories this year are:

Best all-employee international share plan

*An all-employee share plan can be a particularly effective way for a multinational company to bring together a diverse global workforce to help achieve key corporate goals. Applications will be judged on how successfully the share plan meets the company's objectives in light of the complexities of cross-border arrangements.

* In a company with more than 5,000 employees and participants in at least three countries.

Best all-employee share plan

†All-employee share plans help spread the wages of capital and boost company productivity. This award category highlights how share schemes can be used to benefit employee and business alike.

† In a company with fewer than 5,001 employees and participants in no more than two countries.

Best financial education of employees

Share plans can be complex and difficult to understand for the ordinary worker. This award category recognises the efforts of companies to promote participation in broad-based share schemes through dedicated financial education programmes.

Best share plan communications

Communication is key to the success or failure of an all-employee share scheme. This award category highlights the need for communications programmes that are sensitive to the circumstances of an individual company and the make up of its workforce.

Best use of video communication

Video communication can be an extremely effective way of promoting participation in an all-employee share scheme. This award category recognises the benefits of audiovisual communication in engaging with national and multinational audiences.

Best use of technology

Without effective technological solutions, all-employee share plans would be prohibitively expensive and time consuming for many companies. This award category recognises innovative uses of technology to manage, communicate and administer share schemes in a fast changing world.

Most creative solution

All-employee share plans often raise particularly challenging situations. This category is designed to recognise particularly creative solutions to difficult problems encountered in the design and administration of share schemes.

Submissions should be made using our secure online application form. The deadline is **Friday September 1**. Applications will be reviewed by two impartial judges, experts in the use of employee equities, together with Centre chairman **Malcolm Hurlston**. All companies operating an all-employee share scheme are eligible and encouraged to apply for an award. Advisers are welcome to nominate their clients but can only submit one client per category.

To help you draft your applications offline, we have prepared a submission template [.docx] for you to download. Full info is available on the application form, but if you have any questions contact esop@esopcentre.com or call +44 (0)20 7239 4971.

The Esop Centre's second **British Isles employee equity symposium** will be held in London on **Thursday/Friday November 16–17**. Save the date.

EVENT REPORT

Plug the EOT gap, Centre chairman tells Jersey trustees

Opening this year's share schemes and trustees seminar – organised by the **Esop Centre** and the **Society of Trust and Estate Practitioners** (STEP) – in Jersey on May 12, Centre chairman **Malcolm Hurlston** highlighted some of the current

opportunities for the employee share ownership sector in the British Isles. He told the audience of around 40 trustees that the Employee Ownership Trust (EOT) is proving to be an extremely effective mechanism for convincing business owners to sell to their employees. Trustees had been reluctant to embrace the EOT, however, given the additional responsibilities and liabilities involved in being a majority shareholder of a company. Mr Hurlston argued that Channel Islands trustees should address these concerns and plug the EOT gap.

Turning to the UK General Election, he explained that the Centre was putting all-employee share ownership centre stage. As soon as she became Prime Minister, it was clear that Theresa May liked to runs things from Number 10. History told us that when this happens, as under Margaret Thatcher and Gordon Brown, employee share ownership — which depends on different government departments being encouraged from Number 10 to work together — thrived. While Brexit was consuming much of the government's time and energy, low pay and income inequality would both be major issues for the voters who could turn a Tory victory into a landslide: commitments to spread the wages of capital was an obvious solution and probably one of the few subjects both Theresa May and Jeremy Corbyn could get behind.

Chris Lowe, of **KPMG,** spoke about the Common Reporting Standard (CRS). More than 100 jurisdictions – Jersey among them – had committed to the early implementation of the CRS, but each taxation authority was unique in how it had approached the OECD's initiative. At present, there was no clear guidance on the treatment of Employee Benefit Trusts and it was possible that Jersey might apply the equivalent position as the UK. CRS was just one way the outlook had changed in recent years.

Helen Hatton of **BDO Sator** expanded on this theme, highlighting some of the major concerns for the industry based on discussions with seven ceos of Jersey trust companies. She found that while matters like FATCA, the CRS and the General Anti-Abuse Rule were of course important, the ceos were less interested in the details and more concerned about what they actually mean in terms of changing societal attitudes towards tax avoidance and the use of 'offshore' trusts.

A panel discussion featuring Colin Powell CBE, of the **States of Jersey** and Rosemary Marr of **STEP** developed the topics of the previous speakers. Mr Powell agreed with Chris Lowe's assessment that Jersey would probably produce CRS guidance similar to the UK, since the OECD had not challenged it. He concurred with Helen Hatton's argument that companies actively promoting trusts as tax avoidance vehicles were damaging to Jersey and such behaviour could lead to the island being blacklisted by the EU. He told delegates that all those who argue trusts were bad usually didn't understand their functions – for protection and succession and nothing to do with tax.

After the break, Paul Malin from **Haines Watts** guided delegates through how to handle tax problems with HMRC. He explained that approaching the Revenue was not always for the faint hearted since it could get worse before it got better, but it was always prudent to talk.

Graham Muir of the newly merged firm **CMS Cameron McKenna Nabarro Olswang** – now the sixth biggest in the world and trading as **CMS** – pinpointed the key issues in employee share ownership, highlighting HMRC's resources and focus as the main issue affecting share schemes at present. This included the transition to self-certification, the non-statutory clearance procedure, informal clearances, compliance and changes to valuation services.

Pett Franklin's Stephen Woodhouse explained the use of share-based trusts for private companies, including EOTs in the context of succession issues. He concluded that succession is likely to become more of an issue, particularly for smaller companies and partnerships with economic constraints on investment by individuals. He predicted that the use of trusts – especially EOTs – was likely to grow and could become a significant alternative form of business ownership.

Finally, David Craddock of **David Craddock Consultancy Services** provided a case study in which an employee share scheme was influential in a management buyout, pointing out that the principles behind this went back to 1956 when Louis Kelso devised a trust model to help Peninsula News employees who, despite their willingness to buy the company, did not have the cash to enter into the transaction.

MOVERS & SHAKERS

*Centre member **Equatex** announced that **Dave Couzens** had joined as product manager with a specific focus on the UK market. **Mia Claselius** head of global marketing at Equatex, said: "Dave brings a breadth of experience, including implementation and business integration of various technology projects at Computershare and, more recently, in product management. For more than 13 years he has worked with many clients to support new plan design and construct solutions to suit different regions and bespoke requirements." UK-based Mr Couzens said: "Equatex's technology solutions are very impressive,

as are their expansion and growth plans. Being right in the middle of a company with this drive for growth and focus on innovation is really exciting." He can be contacted on +41 44 403 9414, or emailed at: david.couzens@equatex.com

*Centre member **Estera** completed its acquisition of **Morgan Sharpe** on April 28 this year, following receipt of the necessary regulatory approvals. Morgan Sharpe has rebranded under the Estera name, with consequent changes to e-addresses etc as follows: firstname.lastname@estera.com, and its homepage is at: www.estera.com. For further information please visit the Estera website.

*Centre conference speaker **Amanda Flint** of **Mercer** collected the top award for the *Most Creative Employee share plan* at the GEO Awards. Her client Barrick Gold put free shares into the hands of employees with no up front cost to them to give them a holding for their career at Barrick and beyond. Mercer teamed up with **Solium, EY (Canada)** and others to give design & implementation back up to Barrick Gold

***Tony Llewellyn** tells *newspad* that he wants to keep in touch with Esop, now that he has completed his interim assignment at **Smith & Nephew**: "I am looking to move into governance in Sport but it is not easy since a lot of roles are voluntary. In saying that I am working interim and keeping my options open what to do next," said Tony, former share schemes manager at **Imagination Technologies**. Contact Tony at: adllewellyn@outlook.com

*__David Pett__ has given *newspad* his new contact details, now that he has stepped down as a partner in **Pett, Franklin & Co**. - with the intention of ultimately practising independently as a barrister and a member of Temple Tax Chambers in London's Middle Temple. He will, for the time being, remain a solicitor practising through **Colmore Legal Ltd** – for further details, see www.colmorelegal.com Colmore's office phone no. is: 0207 0780205. His new email address is david.pett@colmorelegal.com

*__Alison MacKrill__ left **Carey Olsen** to join law firm **Appleby.** Alison, ex-chairman of the Society of Trust & Estate Practitioners (Guernsey) will head up its trust team as group partner in Appleby's Guernsey office.

The **Citywealth Magic Circle Awards** for 2016 recognised the achievements of individuals and businesses based in the Channel Islands (CI). Guernsey-based **Elaine Graham**, head of employer solutions for Centre member **Zedra**, was named *Woman of the Year,* while Lisa Vizia, director of Saffery Champness and head of the firm's family office team in Guernsey, won the *Trustee of the Year* award. Other award-winning firms based in, or who have offices in, the CI were:

- *Financial Advisory Firm of the Year* – Cazenove Capital
- *Private Wealth Manager of the Year* – Smith & Williamson
- *Trust Company of the Year, Independent* – **Zedra**
- *Trust Company of the Year, Institutional* – R&H Trust
- *Technology Vendor of the Year* – Suggestus (powered by Asset Risk Consultants).

The awards, now in their 12th year, recognise the best wealth managers and advisers in the private wealth sector, in particular those who invest money in charities, private families and foundations

MEMBERS' NEWS

*__Global Shares__ said it had developed a unique share-dealing solution, which helps companies deliver shares to their employees wherever they are in the world. Global Shares' share-dealing solutions provide real-time trading of shares for participants through electronic messaging, allowing users access to exchanges worldwide. Global Shares' regulated status affords it an advantageous market position as it provides users with trading across multiple jurisdictions, the ability to execute foreign exchange transactions as well as distribute proceeds in multi-currencies at competitive rates. Coupled with the Global Shares equity plan management software, these components give it the ability to provide a comprehensive one stop solution to clients and their employees. The employee share-dealing service offers online and telephone support to employee share plan participants, with shares held electronically on their behalf in secure, personalised accounts. Their trades are automatically settled with funds being credited to their account. The service is targeted at companies seeking a simplified global trading solution for their employees, whilst at the same time ensuring they can meet all their compliance and governance obligations. The employee share account is at the core of Global Shares' share-dealing solution. This is an online trading account set up for each individual participant within its equity plan management platform, which simplifies the process of opening an account, trading shares and distributing funds to employee's personal bank accounts, in regulated countries, with an extensive choice of currencies.

***YBS Group** said it had made significant progress on its corporate responsibility ambitions and its achievements had been recognised through several awards – including being crowned *Business of the Year* at the 2016 Third Sector Business Charity Awards. The YBS new *Society Matters* strategy aims to build on this legacy and create a lasting, positive impact on society. It said: "As a group, we are

working to expand the reach of our financial literacy programme, *Money Minds*, focusing in particular on reaching children and young adults in schools between the ages of five to 19. Colleagues use their volunteering allowance to deliver a Money Minds session in a school of their choice, which helps teachers meet the need to improve young people's financial education. Research has shown that debt and money worries can take their toll on mental health, as well as physical wellbeing across all sectors of society; it is an area of increasing importance to HR and employee benefits professionals." **Louise Drake,** national sales manager, added: "This is why we are passionate about supporting our younger people with financial literacy programmes in schools through Money Minds, as well as in the workplace where we have teamed up with *Secondsight*, and *WEALTH at work*, to offer employees access to financial education." Secondsight specialises in advising and delivering employee benefits and conversational workplace financial education in a way that suits employers and their people. "They understand today's workforce is often diverse, with different levels of financial knowledge, and often set across multiple locations. To address these challenges, Secondsight works with employers to provide quality communication and education to increase take up of Sharesave schemes. In addition to the bespoke online Sharesave portal, which allows employers to communicate with the widest audience possible, other successful communication channels include group presentations, workshops, and webinars, predominately delivered face-to-face," said Louise.

*__Cytec Solutions__ has achieved ISO 27001 certification. This is the internationally recognised Information Security Management Standard that proves an organisation's commitment to the security of their customer, employee and shareholder's information

"We are delighted to confirm that Cytec Solutions is now ISO27001 certified, establishing us as one of the leaders in our field," said Cytec ceo **Nick Chinn.** "Information security has always been our number one priority and the ISO certification provides independent confirmation of our secure environment, robust process and the controls that we have in place to ensure that our client's and our own data is secure." Nick added**:** With the increasing incidence of cyber-attacks, it is essential for companies to have absolute confidence that their data is going to be secure and correctly managed by any third party. We believe that the ISO certification will help to give our clients the proof and assurance that they need and give them confidence in our staff, systems and processes."

The benefits of ISO 27001 certification include: proving to clients an organisation keeps their information secure; achieving operational excellence, minimising the risk of potential data security breaches; protecting reputation and reducing errors and costs.

"Not only did we achieve the required standard but the auditors provided the following feedback: *"Thank you, for making the audit such a pleasure to conduct. It was evident throughout the process how proactive you and the team are and that you make excellent use of the systems available to you. Leadership is from the top and that was demonstrated at both audits. The hard work over the past year and more importantly the last few months have enabled you to develop and implement an information security management system that meets the requirements of the Standard, so well done"*.

UK CORNER

Kent based fruit & veg **Fresca Group** chairman Chris Mack said he expects subsidiary **Mack** to become a majority employee-owned business within the next three years. He revealed that he wants to see employee share ownership increase in the business, 39 per cent of which is owned by two employee trusts.

"For me the best evolution for the business is to finish up as a meaningfully employee-owned business," he said. We are actually already classified as being employee-owned officially… but we'll be working on moving that percentage up and making it meaningful for the people in the business. For me that's one of the important factors in our ongoing success." Mack said this could happen in the next two to three years, but said the number one priority was "being able to fund capital expenditure" to support the existing business. "Shifting share ownership is a bit further down the list of priorities but it will happen," he added. Mack appeared to rule out the suggestion that a member of his own family might take over as Fresca chairman when he eventually steps down, saying "I don't think so". He is the fourth generation in his family to run fresh produce supplier Mack, which is still privately owned but forms part of The Fresca Group. "I came at a time when it was still okay for a member of the family to be encouraged and promoted," Mack said. "The world is a different place now. It would be very difficult for a member of the family to be parachuted in and run the business. It's too complicated."

Entrepreneurs Relief tax probe risk

Private companies, particularly those which are private equity backed, sometimes use so-called 'growth shares,' to allow senior managers to benefit from **Entrepreneurs Relief (ER)** on the increase in value of those shares. Recent regulatory changes mean these structures risk inadvertently triggering a reporting obligation, to the effect that they constitute tax avoidance, warned Centre member **Abbiss Cadres.** Growth shares are designed to allow participation in the rising value of a company (for example on a sale) only above a pre-determined 'hurdle value'. The hurdle value is typically set at a premium to the current value of the shares when they are acquired by the manager. This reduces the up-front value of the shares, making them more affordable, while incentivising the recipient by reference to the growth in value of the company. Growth shares

implemented by private equity backed companies have commonly been structured to allow a small number of senior managers to benefit from ER.

The new DOTAS 'Financial Products Hallmark' potentially covers growth share arrangements. The application of DOTAS usually turns on whether it would be reasonable to conclude that the main benefit of including the particular features of the growth shares was to obtain a tax advantage. DOTAS requires certain transactions to be notified to HMRC where it considers that part of the rationale for the transaction is the avoidance of tax – a finding which companies generally prefer to avoid.

Although such a notification does not imply unlawful conduct, many companies prefer to avoid labelling themselves to HMRC as a 'tax avoider.' Others may be less concerned about this label. However, most companies prefer not to flag their activities to HMRC, in order to avoid increased scrutiny of the company's tax affairs more generally. In addition, any DOTAS notification is an invitation to HMRC to apply the General Anti- Avoidance Rule (GAAR) and seek to deny Entrepreneur's Relief. Failure to report a scheme to which DOTAS applies can lead to penalties for companies using the scheme and for advisers involved in designing the arrangements. Advisers will be alive to the legislation expected to be enacted after the June UK General Election whereby advisers found to be 'enablers' of defeated tax avoidance schemes may be subject to additional penalties.

Companies and their advisers must consider carefully whether or not a DOTAS notification is required. The aims and context of the overall structure of which the growth shares form a part are critical, as this is likely to indicate the level of exposure to a DOTAS reporting obligation. Abbiss Cadres can help with this assessment, and advise how to mitigate any risk. For further information please contact **Alasdair Friend,** Partner, Comp & Ben, on +44 203 051 5711, or email: compandbens@abbisscadres.com.

Annual returns deadline July 6

The HMRC submission deadline for the annual filing of returns about employment-related securities for the 2016/17 tax year is midnight **July 6 2017,** Abbiss Cadres reminded Centre members. All companies which award share incentives (options, restricted stock, long term incentives, etc.) to their employees in the UK must file an annual share plan return with HMRC following the end of the tax year. The annual share plan returns must be filed on-line, as part of the company's PAYE on-line processes, via the HMRC Employment Related Securities (ERS) online service. *In order to be able to file the returns, companies must have registered their share plans with HMRC.* Where a company operates tax-advantaged share plans in the UK, it must register each tax-advantaged plan separately, and self-certify that those plans satisfy the conditions for favourable tax treatment. All non-tax advantaged plans operated by a company can be registered under a single registration number. Where a company has previously registered a share plan, it must complete a 'nil return' even if no reportable events (grants, exercises, vestings, etc.) occurred during the tax year

The ERS reporting requirements apply to any share options, shares and other types of security acquired by UK employees by reason of their employment. It can therefore apply to share options and other kinds of share incentives granted by non-UK companies to UK based employees. Reporting may be required for non-UK resident employees who carry out work duties in the UK. Each ERS plan or arrangement should be registered online, however non-tax advantaged plans or arrangements do not need to be registered until there is a reportable event.

Companies that operate tax advantaged ERS plans, such as Share Incentive Plans (SIPs), Savings Related Share option plans (SAYE) and Company Share Option Plans (CSOPs) must self-certify online that the plan complies with the relevant statutory code. The company secretary (or the employer on their behalf) should complete an online form declaring certain requirements have been met at the date of registration or from when the first option or award was granted.

General Election hits Finance Act

Key clauses were ditched from the Finance Bill in order to help it rush through its remaining stages in the Commons before the dissolution of Parliament, prior to the General Election. Some of the major omissions from the Bill included: Corporate loss carried forward rules; Corporate interest restriction rules; Changes to the substantial shareholdings exemption; Non-domicile changes; Changes on Making Tax Digital and associated changes regarding trading and property allowances. Clause 48 and Schedule 16 on employment income provided through third parties escaped the axe, which is most likely temporary. For details of what was included and what was omitted see http://deloi.tt/2os1Fnc. Some, generally helpful, amendments were passed to the following: Clause 48 (disguised remuneration - employment income provided through third parties); Schedule 1 (workers' services provided to public sector through intermediaries); Schedule 2 (optional remuneration arrangements); Schedule 3 (overseas pensions); Schedule 4 (pensions: offshore transfers); Schedule 16 (employment income provided through third parties). For detailed notes see http://deloi.tt/2oHF1Du A pledge to bring back the dropped clauses, post the General Election, was made by **Financial Secretary to the Treasury, Jane Ellison,** who said during the Committee Stage debate: 'The Bill is progressing on the basis of consensus and therefore, at the request of the Opposition, we are not proceeding with a number of clauses. However, there has been no policy change. *These provisions will make a significant contribution to the public finances, and the Government will legislate for the remaining provisions at the start of the new Parliament.'* See http://deloi.tt/2oITdv7 The

Bill passed its House of Lords stages on April 26 and received Royal Assent on the following day. The text is at http://deloi.tt/2oDpCbh

John Lewis Partnership (JLP) set aside £36m after learning that its staff rota systems did not comply with the Government's national minimum wage regulations. The employee owned retailer, which prides itself on prioritising its employee 'partners', said that it would liaise with HMRC to investigate its practice of "pay averaging" which aims to "smooth out" an employee's pay over the year to ensure a consistent amount is paid each month. "This arrangement was implemented to support Partners with a steady and reliable monthly income, but we now believe it may not meet the strict timing requirements for calculating compliance with the NMW regulations", said JLP in its annual report. The retail group, which runs the John Lewis department stores and Waitrose food shops, said that it was booking a £36m exceptional charge to cover any retrospective payments that are required to current and former partners affected. This embarrassment followed a decision by JLP to reduce its highly feted staff bonus to the lowest level since the 1950s. As a result, chairman Sir Charlie Mayfield is waiving his £66,000 bonus for the year. Sir Charlie will still receive a £1.4m salary, following a near five percent increase in basic salary. He receives a £300,000 defined benefit pension entitlement, although his total reward package is 7.4 percent lower than the previous year. John Lewis said that the chairman's pay was 70 times the average basic pay of non-management partners.

Scrap LTIPs, says City institution

Complex and generous share awards for senior executives should be scrapped and replaced with simpler, less lucrative incentives, according to one of the City's top fund managers. Richard Buxton, of **Old Mutual Global Investors**, writing in *The Sunday Telegraph*, says "enough is enough" on the "annual pay panto" and that the Long-Term Incentive Plans (LTIPs) provided by most big listed companies should be phased out as soon as possible. Mr Buxton is the first major investor to break ranks on the issue and back a recommendation by the business select committee for the LTIPs, which are typically linked to multiple measures of performance that change every year, to be dismantled. The cross-party group of MPs said top management should instead receive a chunk of shares each year without conditions, except that they could not cash in for five years. The radical reform would mean "no incentive to manage the business for short-term profitability" and "no financial engineering or value-destructive acquisitions to boost next year's earnings per share", says Mr Buxton. Opposition to LTIPs puts him at odds with the **Investment Association**, the lobby group that represents the majority of City fund managers. It argues companies should be free to set their own pay structures in consultation with shareholders, but Mr Buxton brands its efforts to reform remuneration "a damp squib".

The virtues of SARs

Attracting and keeping talented employees in start-ups is challenging and employee participation often is a main topic for start-up founders who not only want to attach skilled employees but also want to offer their employees the opportunity to participate in their start-up company and reward them for their contributions. Eso plans take different forms. The best known would probably be an equity based plan whereby the employees participating in the Eso plan acquire (depository receipts of) shares or options to acquire shares.

Another option which is getting more and more attention, is to offer participants so called Stock Appreciation Rights (SARs), said Centre member **Bird & Bird**. "Start-ups are normally not in the position to pay high salaries or bonuses to key employees; to achieve sustainable growth there are often other financial priorities such as product- and business development, patent research and registration, marketing, market survey etc. However, investing in talented and skilled personnel is deemed of great importance to start-up founders and offering SARs could be an effective instrument to attract such personnel without having to pay up-front large salaries and bonuses," said Bird & Bird. SARs entitle employee participants to a payment in cash, or in shares, equal to the *increase* in the value of the shares in the start-up company over a certain period of time, without acquiring the underlying shares. So, the big advantage of SARs for the participant is that no exercise price is payable upon grant and the fact that the participant is entitled to receive a payment linked to the increase in value of the shares in the start-up without having to actually buy shares. In the SARs agreement, a fixed grant price is set, as of the moment of grant by the start-up company to the participant. The difference between the grant price and fair market value of the start-up company's shares (the FMV) is the amount payable to the participant. Ordinarily, the FMV will be determined as per the moment a vesting event occurs (e.g. an acquisition of the start-up company, a financing round or an exit arrangement).

Example: On May 1 2017, a start-up in the IT sector grants 500 SARs to a senior data analyst. Each SAR corresponds to one ordinary share. The grant price per share at the grant date is set at €20. On May 1 2020, the start-up attracts its first major financing from a strategic investor, who agrees to invest a certain amount in the start-up based on a share price of €60 per share (the FMV). This vesting event entitles the participant to a payment of 500 (the number of SARs) x €40 per share (i.e. the FMV per share minus the grant price) = €20,000. This example is clear and rarely leads to discussion. However, the parties sometimes agree that a vesting event occurs after a certain period (e.g. two years after the grant date) or

when the participant leaves the start-up, quite often distinguishing between 'good and bad leavers'. In these cases, it is difficult to establish the FMV of the shares (and corresponding payment amount) as there is no external valuation by an investor. In addition, there is no cash coming in, which could be used to pay out the SARs; this could lead to discussions between the participant and the start-up founders. It is advisable to include specific provisions in the SARs agreement about vesting events - the calculation of the amount payable upon a vesting event and cash payment. In several cases, the Dutch courts had to judge on (unclear) arrangements in SARs Agreements, not only as to whether a vesting event had occurred but on the appreciation of the SARs and the calculation of the payment.

Beneficial ownership register risk to trustees

Since April 6 last year, most UK companies have been required to formally identify and keep a register of the individuals who are *'persons with significant control'* (PSC) over them and to include this information in an annual return. The info on PSCs is available for public inspection. Trustees, settlors, protectors and beneficiaries can potentially be PSCs. PSCs themselves are under a positive duty to ensure their details have been entered on the PSC register, said Centre member **Pinsent Masons.** Failure to comply, or the provision of false information, is a criminal offence. This summer, the UK is bringing in a new register of beneficial owners of trusts. Information will only be available to tax and law enforcement authorities but future EU changes may require the UK to grant wider access.

The obligation to maintain a PSC register applies to all UK companies and LLPs, apart from those whose shares or equivalent interests are listed on the London Stock Exchange main market, AIM or certain overseas stock exchanges.

A PSC is an individual who meets one or more of the following conditions in relation to a company or LLP: *Directly or indirectly holds more than 25 percent of the shares and/or more than 25 percent of the voting rights *Directly or indirectly holds the right to appoint or remove the majority of directors and *Has the right to exercise, or exercises 'significant influence or control' *Has the right to exercise, or exercises, significant influence or control over the activities of a trust or firm that satisfies any of the above conditions or would do so if it were an individual. Every PSC must be included on the PSC register. Where the PSC holds the interest indirectly through a chain of UK companies or LLPs which are themselves subject to the PSC legislation, only the top entity needs to register the individual as a PSC. Entities lower down in the chain will need to register the UK company or LLP immediately above it in the chain as a 'relevant legal entity'.

Does the offshore trust satisfy any of the first four PSC conditions applying to the UK company – for example it directly or indirectly holds more than 25 percent of the issued share capital? If it does, the next step is to identify whether any individual has "the right to exercise, or actually exercises, significant influence or control" over the activities of the trust. Such a person would be a PSC. This could include the offshore trustee, if an individual, or the directors/ shareholders of an offshore corporate trustee. Other PSCs might include the settlor, protector or beneficiaries if they have some legal power over how the trust is run. It might extend to a person who issues instructions to the trustee which are generally followed. There are exceptions for those acting in a professional capacity, such as lawyers and accountants.

UK companies and LLPs are legally required to take reasonable steps to establish all those who should be registered. They must ensure the information is kept up to date. Failure to comply renders the company or LLP and any officer in default guilty of a criminal offence, punishable by up to two years' imprisonment.

To gather the information, companies and LLP have been given legal powers to serve notices requiring information from suspected PSCs or third parties who may have information about a PSC. The recipient of a notice has one month in which to reply.

Failure to do so, or the provision of false information, is a criminal offence, again punishable by up to two years' imprisonment. *The company or LLP may put restrictions on the shares or other interest held by anyone who does not cooperate*.

In addition, if an individual knows or ought reasonably to know that he/she is a person who should be registered, his details are not on the PSC register, and he has not received a notice from the company or LLP asking for confirmation, then he has a duty to inform the company or LLP of his status. In most cases, this must be done within one to two months of becoming aware, or of being deemed to have become aware, of the need to be registered. Again, failure to comply is a criminal offence.

Particulars about each PSC must be recorded in a PSC register. The register must be kept by the company/ LLP unless it elects for the register to be kept by Companies House. The information in the PSC register must be provided by the company or LLP in its annual Confirmation Statement (which replaces the Annual Return) to Companies House. The information on the register and confirmation statements has to be made available to the public. If the company or LLP keeps the register, there is a procedure for challenging a request for information which is not made for a 'proper purpose', although the proper purpose test is wide. In addition, no such restriction applies to the information held by Companies House in the annual Confirmation Statement, which is essentially the same information.

The information which must be kept about each PSC is: *the name, service address, country of residence, nationality, date of birth, and usual residential address of the PSC; *which of the five PSC conditions has been triggered – and (if relevant) whether the trust's holding in the company or LLP is in the range 25-50 percent, 50-75 percent or more of the shares/voting

rights; *the date when the individual became a PSC (April 6 2016 if before this date).
This information is to be made publicly available except for residential address (special rules apply for requests made by credit reference agencies and certain public authorities). If there is a serious risk of violence or intimidation, an application may be made to Companies House for a PSC's information to be protected from disclosure (other than to law enforcement agencies) and if successful this must be noted on the register and Confirmation Statement. If protection is already in place under existing rules applying to directors of a company and members of an LLP, it may be possible to roll this protection over to the PSC information.
Later this month, after the General Election, the UK plans to implement a register of beneficiaries of onshore and offshore trusts which are liable to pay UK tax in respect of trust income or assets. It set its latest proposals in a consultation response document issued in March. It is intended that the register will be maintained by HM Revenue & Customs (HMRC) and will only be accessible by tax and law enforcement authorities. The register is being introduced, as part of a wider change to the anti-money laundering rules, to comply with the requirements of the EU's Fourth Anti -Money Laundering Directive. However, further changes are still being considered by the EU. These are likely to have further implications for trusts and, depending upon what is finally agreed, could result in beneficial ownership information being made public or at least available to 'persons with a legitimate interest'.
The UK is making it a criminal offence if an offshore entity fails to prevent its employees or other authorised persons from facilitating UK tax evasion. The new offence is expected to come into force by September 2017 and will require businesses to make changes to their policies and procedures so that they can demonstrate they have put in place reasonable prevention procedures to prevent the facilitation of tax evasion taking place. The government is considering the introduction of a new legal requirement for businesses, agents, advisers or any other person who creates offshore arrangements for UK taxpayers that exhibit certain characteristics specified by *HMRC to be required to notify HMRC* of the creation of these arrangements and of any clients using them. It is considering whether the requirement should extend to offshore businesses and persons as well as UK ones.

WORLD NEWSPAD

$300m man
Alphabet's recent proxy filing revealed that **Google** ceo, Sundar Pichai, was awarded total compensation of almost $200m in 2016, bringing the value of his cash and equity awards in 15 months as Google's ceo to **$300.4m**

Pearson stunned by investor rebellion
*FTSE 100 education publisher **Pearson** capped a terrible year with a thumping from investors over the level of ceo John Fallon's annual reward. **Two-thirds** of shareholders failed to support the company's remuneration report at its agm after Mr Fallon received a £343,000 bonus, equivalent to a 20 percent pay rise, despite having presided over its worst year in almost half a century. In detail, 61 percent voted to reject the remuneration report and almost seven percent abstained in the non-binding vote. Corporate governance group **Manifest** said that the protest was the largest shareholder rebellion at a FTSE100 company since 90 percent voted against Sir Fred Goodwin's pension arrangements at **Royal Bank of Scotland** in 2009. **Institutional Shareholder Services**, the world's largest adviser on agm voting, and its biggest rival, **Glass Lewis**, had both in advance urged clients to reject Pearson's remuneration report. In addition, Pearson suffered a 31 percent protest in the *binding vote* on its executive pay policy for the next three years. Shareholders reinforced their anger with a 27 percent vote against the reappointment of Elizabeth Corley, chairman of the remuneration committee, as a non-executive director.
One investor at Pearson's agm accused the board of being 'asleep on the job' and said the remuneration strategy had "manifestly failed'' and had been paying for failure. "We do not need millions of pounds paid for shoddy performance such as we have seen at this company," he said.
Pearson said it was "disappointed" by the results, having "engaged extensively" with investors before the agm. A spokesman said: "Naturally, we acknowledge this feedback and thank those shareholders who have already spoken to us and explained their reasons for not supporting the relevant resolutions. The remuneration committee is committed to continuing dialogue with our shareholders." Mr Fallon had sought to calm criticism of his bonus by spending all of it, net of tax, on Pearson shares to align his own interests with those of shareholders. He declined to comment on whether he had considered rejecting the bonus, which came after a record £2.6bn annual loss and the biggest ever one-day fall in Pearson's shares following a massive profit warning. Fallon was awarded a total pay package worth £1.5m last year, a 20 percent increase despite overseeing a profit warning that triggered the biggest ever one-day fall in Pearson's share price. The heavy loss was caused by a write-down on an acquisition from the '90s, but the profit warning was a result of a steep structural decline in Pearson's education business.

Investors' trench warfare over reward
*The investor backlash against 'excessive' executive reward intensified with a spate of protest votes, including defeat of the board at the **Crest Nicholson** agm. Elsewhere, **TP ICAP, Imperial Brands** and **Thomas Cook** had to trim executive pay proposals this year after shareholder disquiet and **Aggreko** withdrew its remuneration plans after

almost half of its voting shareholders refused to back them. In addition, **Inmarsat** just scraped across the 50 percent line for its remuneration report while 40 percent of **AstraZeneca** shareholders voted against the drug giant's executive reward report at its agm.

However, despite the media hype, overall investor opposition has been somewhat muted. Shareholder discontent was easily beaten off at the agms of **BP**, 73 percent state-owned **Royal Bank of Scotland** and **Rolls Royce**. According to data from Proxy Insight, average shareholder support for pay votes at FTSE 100 companies has increased this year. So far in 2017, policy votes have received average support of almost 95 percent, slightly higher than the 94 percent support when they were last approved. The average non-binding annual vote to approve executive reward in the year jumped four percent from 2016.

*__BP__ successfully headed off an investor revolt over executive reward after slashing ceo Bob Dudley's remuneration package. More than 97 percent of votes at the oil giant's agm were in favour of the re-jigged remuneration policy, according to initial ballot results, a relief for management after a 59 percent revolt by shareholders at last year's mtg. Then, investors were angered by Mr Dudley's pay rising by almost a fifth to £15m the previous year. BP chairman Carl-Henric Svanberg said that last year, "shareholders sent us a very clear message on how we approached paying our executive directors. We said we would listen and come back with a renewed policy for remuneration. You will have seen the steps we have taken this year and which we are proposing for the future." The annual report revealed that Dudley's total package for 2016 was cut to £8.9m and contentious issues around incentives removed. These included handing over matching shares in the annual bonus and simplifying how the payout is worked out, as well as making targets more demanding. The safety performance of the company features more heavily in the bonus structure. Under the new system, Mr Dudley's maximum pay and bonuses for the next three years would be £12.15m, with incentives having a new focus on BP's "contribution to the longer-term transition in supplying lower carbon energy to drive the global economy". BP's remuneration committee chairman Dame Anne Dowling met or spoke to investors or advisers 68 times about the changes, with the company saying shareholders had said they found the existing policy "confusing". Changes to reward follow a second disappointing year for BP, with a headline profit for the year of just £88m, though this excluded the £3.15bn of charges relating to the Deepwater Horizon oil spill in the Gulf of Mexico back in 2010, which has left BP facing huge payouts.

*__BT__ ceo Gavin Patterson's total reward is to be cut sharply this year after its remuneration committee ruled that, together with former cfo Tony Chanmugam, he should receive no bonus. BT's profits were hit by a £300m bill for fines and compensation over failings in its UK network unit. The pair will have to return incentive payments awards in the previous three years. Mr Patterson's deferred bonus will be cut by £338,398. Mr Chanmugam faces a £193,412 bonus reduction after BT's profits were inflated by fraud in Italy.

*__Credit Suisse__'s top managers and board of directors were grilled by shareholders on the bank's decision to pay out millions in bonuses despite losing $2.7 bn last year. Unrest over pay packets at Switzerland's second-biggest bank had already pressured Credit Suisse's senior management team, led by ceo Tidjane Thiam, to take a voluntary 40 percent bonus cut. "*Let's put an end to the robber barons!*" investor activist Hans-Jacob Heitz urged shareholders at Credit Suisse's agm in which others criticised the payouts. At the meeting, shareholders were asked to vote on short-term bonuses for executive management worth a total of $17m. The payouts were approved, but the level of support plummeted with 59.5 percent voting in favour against 81.5 percent in the corresponding vote last year. Shareholders backed the proposed board pay as well as fixed compensation and long-term bonuses for senior management by wider margins. Investors in Swiss companies have veto power over executive and board compensation thanks to a referendum in 2013. A majority must vote against proposed compensation to block it. In a further sign of unrest over Credit Suisse's compensation policy -- criticised for an apparent disconnect between pay and performance -- 40 percent of voters opposed the 2016 compensation report, more than double the opposition at last year's agm. "It is my job to prevent such a low vote in future," chairman Urs Rohner said after the vote.

*Satellite communications giant **Inmarsat** narrowly avoided a defeat over executive reward by its shareholders at its agm. Investors approved Inmarsat's remuneration report by a majority of only 51 percent to 49 percent against. It followed a year of sliding profits and a weak share price that saw the company relegated from the FTSE 100. Including abstentions, a 53 percent majority of Inmarsat investors refused to back awards to top executives. Shareholders rebelled after Inmarsat, which provides worldwide satellite phone and broadband services, decided to award its top management bonuses worth more than 88 percent of their salaries.

* Almost a third of shareholders rejected **Johnston Press'** remuneration policy at its agm, a week after the troubled newspaper owner took steps to calm investor anger by scrapping planned increases to its directors' reward. The same percentage voted against giving Johnston Press the authority to grant performance share plan awards without performance. The revolt came despite Johnston Press' decision to amend its remuneration policy, after facing protests from investors, who pointed to the fact the firm's cash reserves fell to only £16m last year from more than £40m. Johnston Press, which publishes *the i* and more than 200 local titles, had been planning to hike the maximum possible payouts of both its ceo, Ashley Highfield, and cfo David King. Under these plans, Mr Highfield's bonus would have been capped at 180 percent of his £430,000 salary, equal to £774,000, while Mr King's maximum bonus would have been

165 percent of his salary. These would have been paid entirely in cash, as Johnston Press said this would avoid significant dilution for shareholders, given the collapse of its share price.

*Supermarket chain **Morrisons** significantly boosted ceo David Potts's reward package after shareholders pushed for him to be paid more. Since taking the helm of the retailer in March 2015, Potts has overseen a dramatic turnaround in Morrisons' fortunes - reversing the supermarket's sales decline and restoring its dividend. The Bradford-based supermarket group said that following meetings with shareholders and investor bodies it had taken the decision to increase Mr Potts' LTIP "specifically in response to shareholder feedback...which provides the opportunity for increased reward". As a result, He will now be given up to a maximum £5.3m total pay-package after becoming eligible to receive an LTIP of up to 300 percent of base salary, compared to the current 240 percent. In addition, Potts is eligible for a 200 percent bonus on his £850,000 salary, although he must defer half of this by keeping Morrisons shares for three years. Overall, he must hold 250 percent worth of his salary in the company's shares. In 2016, Potts received total reward of £2.8m compared to £2.3m the year before, said the supermarket's annual report which revealed he had waived a salary increase offered by its remuneration committee.

***Royal Bank of Scotland (RBS)** defended its new executive reward plan at its agm after some investors criticized the policy for being too generous. Despite dissent from two City institutions, shareholders voted overwhelmingly to back the bank's executive pay plan, with 96 percent approving the proposals. RBS said it had recognised that its pay policies had become too complex and the new plan would reduce excessive risk-taking. "The time is right for a new, simpler approach, developed specifically to align with RBS's culture and our thinking on pay," said Sandy Crombie, chairman of RBS's remuneration committee. Two leading investor advisory groups **Pensions and Investment Research Consultants (PIRC)** and **Institutional Shareholder Services (ISS)**, had urged shareholders to vote against the reward policy. ISS said while the overall size of potential bonuses is being cut for Ross McEwan, its ceo, and Ewen Stevenson, its fd, the plan made it easier to pay out. PIRC said executives should only be rewarded for the period they serve the company and not receive any payout when they leave. "We disagree with the conclusions reached in these reports and strongly challenged the view from ISS that the level of discount was insufficient," Crombie said. The board faced a barrage of questions from irate shareholders throughout the meeting, ranging from handling of past scandals to branch closures. Shareholders criticised the bank's decision to reject demands for greater powers for ordinary shareholders to have a say on issues such as executive pay, company strategy and director appointments.

***Rolls Royce** beat back protests from investors over plans to boost bonuses for senior staff despite record losses and a £671m corruption fine. The firm pushed through a big increase in the maximum award of long-term bonus from 180 percent of ceo Warren East's £925,000 annual salary to 250 percent. The potential payout for other executives will rise from 150 percent of their salary to 225 percent. The short-term bonus was being reduced, but the overall prospect is a 50 percentage point rise. Nevertheless, its remuneration report gained overwhelming approval from shareholders for 'headroom' of up to 300 percent for long-term incentives, if required. Rolls said the increases were necessary to attract and keep hold of top staff required to oversee its attempted turnaround. The salaries of 8,000 Rolls Royce managers worldwide were frozen earlier this year. Rolls's board had the additional complication of convincing shareholders that their turnaround strategy was working after it posted a record annual loss of £4.6bn in February. Rolls said it "needed to address the competitiveness of our current rewards."

***Standard Chartered** faced an investor revolt over a £7m share bonus scheme it is handing to its ceo and finance chief as a reward for reviving the fortunes of the troubled emerging markets focused lender. Institutional Shareholder Services told shareholders that it was concerned that the targets set for the top bosses in the bank's long-term incentive plan (LTIP) were not demanding enough. Ceo Bill Winters stood to net share awards with a face value of up to £4.4m from the scheme, while Andy Halford, cfo, could receive £2.7m. ISS stopped short of recommending that investors reject Standard Chartered's remuneration report because of the LTIPs. Some investors expressed concern about the bonus scheme. The main controversy was over the Return on Equity (RoE) target for 2019 accounting for a third of the LTIP plan, which ISS described as being "markedly low". The bank cut the target in the scheme to a range of five percent to eight percent, down from an earlier range of seven to ten percent. The awards are scheduled to vest in five annual tranches from 2020 onwards. "For many shareholders, RoE is the number one ratio when assessing investment performance and single-digit performance does not represent a functioning investment," ISS said. "RoE of eight percent would trigger maximum payout under this element while representing a poor return for shareholders – this is a significant concern." Standard Chartered's underlying RoE last year was just 0.3 percent and in 2015 it slumped to a $1.5bn loss, its first time in the red since 1989.

*The world's largest ad agency, **WPP,** revealed that ceo Sir Martin Sorrell's total reward was reduced from £70m to £48m in 2016, the last year of the controversial 'Leap' incentive scheme it has been forced to scrap. A new policy capping his annual pay at about £19m had already been agreed. A series of investor rebellions against his pay, the biggest being in 2012, during the '*shareholder spring*,' when 60 percent of investors rejected his annual pay package) forced WPP's board to cut his remuneration

dramatically. Continued unrest among shareholders led the company to announce it would reduce pay further to a maximum of just over £13m. This would put him much more in line with his peers. John Wren, the long-serving ceo of the world's second-biggest ad group, **Omnicom,** was paid $26m (£20m) last year. Michael Roth, ceo of rival **IPG**, was paid $18m (£13.7m). However, the £13m cap won't come in until 2021, when Sorrell will be 76.

Intermediaries targeted over tax evasion

During a regular hearing with MEPs, the EU Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, confirmed that the Commission was drawing up a "tough and wide-ranging" proposal for measures against intermediaries who facilitate tax evasion. The proposed rules, which are expected to be made public in June, will apply to "all intermediaries, cover all harmful practices, and all jurisdictions". Mr. Moscovici stated that the Commission would prefer a hard law rather than a code of conduct, but indicated that this would not include criminal sanctions. In the same hearing, Mr. Moscovici confirmed that the prospective list of non-cooperative tax jurisdictions, which the Commission has been working on in recent months, would be presented to EU finance ministers in June's ECOFIN meeting, with its expected adoption by the end of September

France:

The French Constitutional Court ruled that employer social contribution payments made at grant on certain tax qualified free share awards could be reclaimable if the award fails to vest, reported *Tapestry Compliance*. For tax qualified free share awards granted under a free share plan authorised between October 2007 and the introduction of the *Macron Law* in August 2015, the employer social contribution is due in the month following grant. If the award, or part of the award, does not vest, the employer hitherto was not entitled to claim a refund of the social contribution. The court ruled that although it is acceptable for the employer to be required to pay the social contribution on grant of the award, the inability to claim a refund when the award does not vest is not constitutional. As a result, it may now be possible for employers to claim a refund from the French social administration (URSSAF) of employer social contributions paid in relation to an award, or part of an award, which has not vested. Limitation periods apply to claims for reimbursement of payments made to the URSSAF which may limit the ability of an employer to make a claim as a result of the court's decision.

This decision does *not* affect 'Macron' tax-qualified free share awards, which are awards authorised under the more favourable tax regime introduced in August 2015, as employer social contributions under the Macron regime are not due until within the month following *vesting* of awards. Companies seeking to apply for a refund will need to act quickly. They should review any employer social contributions they have previously paid on tax-qualified free share awards at grant, including in order to determine the amounts and times of payment and consider whether they may be eligible for a refund. Companies should put in place systems to monitor the employer social contributions paid at grant and track whether those shares subsequently vest or lapse, so that they do not miss out on opportunities to claim a refund where the employee does not actually end up receiving the shares. Emmanuel Macron is now President of France. The tax-qualified regime for free share awards which bears his name was introduced while he was the French Economy Minister. Following his departure from the government, the Macron free share award regime was watered down at the end of 2016 to reduce the tax benefits.

Tapestry said: "*This is welcome news. It has long been considered unfair that companies can incur this cost where the employee does not end up receiving an actual benefit. The Macron law sought to remedy this (by moving the time of payment of employer social contributions from grant to vesting) but this did not affect awards granted under free share plans authorised prior to the regime's introduction. Certain evidence will need to be produced to the URSSAF in order to successfully claim a refund, so it is important companies get specialist advice on the URSSAF's requirements. Nevertheless, the process could be worthwhile, particularly where significant amounts are involved.*"

Up front tax holds back Irish Eso

Only six percent of Irish employees are shareholders in the company where they work, compared to the EU average of almost 22 percent, according to a new survey, reported the *Irish Independent*. Employees'

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stake in large European companies grew to €325bn in 2016. In the US, paying employees partly through a stake in the business has allowed many start-up businesses to grow rapidly with relatively low costs, while employees can reap huge rewards. However, the Irish tax system, which hits employees with a tax bill when they are awarded shares rather than when they sell them, is seen as a major barrier to broadening share ownership. “If Ireland wants to produce the next Facebook or Google, it will need to attract and retain the staff to help such a company develop,” said Gill Brennan, ceo of the Irish ProShare Association (IPSA). “By offering employees a stake in the business they work in, employees have a vested interest in ensuring that the business thrives, but the current tax regime on employee incentive schemes acts as a barrier (to employee ownership).

South Africa

Economic Development Minister Ebrahim Patel announced that government will look to create opportunities for workers to participate as shareholders in companies and having worker representatives on company boards. Delivering his budget speech, Patel said South Africa must look at new ways for broad ownership in the South African economy. “We must build our own economic co-determination model in which workers and investors cooperate in growing the economy, creating more jobs and ensuring that the wealth generated in the economy is more fairly and equitably distributed,” he said. “High levels of economic concentration and racially-skewed ownership profiles stunt economic growth, prevent entry of new players, reduce consumer choice, limit the levels of innovation and dynamism in the economy and feed a growing resentment among black South Africans of the failure to realise the vision of the Constitution,” Patel said. “We will be finalising proposed changes to the Competition Act.” His Department released a framework and will work with a panel of experts to complete recommendations within six weeks. “To deepen our information base on the extent of transformation, we will also work with other departments to quantify the extent of black citizen participation in the economy,” Patel said. In the financial year ahead, the Competition Commission will investigate about 100 cases of cartels’ behaviour in different sectors of the economy, including food, infrastructure, chemicals, financial services and car-parts.

Zimbabwe - Crocodile Esop

Zimbabwe crocodile breeder, **Padenga Holdings,** will award its management and employees a 15 percent stake in the company after shareholders approved a company-wide share option scheme. Padenga said that the scheme seeks to economically empower the company’s employees while at the same time enabling the company to meet the requirements of the *country’s Indigenisation and Economic Empowerment Act.* Shareholders approved at an egm two share option schemes, for both management and employees, which will identify them with the company while promoting its growth and profitability. The first share option agreement is the *Padenga Management Share Ownership Trust*, which will be granted 54m shares representing ten percent of the company’s issued share capital. The other agreement is the *Padenga Employee Share Ownership Trust* which will be granted 27m shares, representing five percent of the company’s issued share capital. “The Padenga management share ownership trust and Padenga employee share ownership trust will closely align with the long term interest of employees with the company,” said the company in a circular to shareholders.

The Zimbabwean Government is using employee share ownership schemes as well as community share ownership trusts as a way of redistributing wealth among companies, their employees and communities they operate in. This ensures that ordinary Zimbabweans benefit from the various economic activities. Share ownership schemes are outlined in the Indigenisation and Economic Empowerment (General) Regulations of 2010 as part of corporate compliance plans. Meanwhile Padenga is confident that the firm will meet its target cull of 46 000 crocodiles this year with signs of a high quality *crop* already showing. There is strong demand for crocodile meat and skins in various parts of the world.

Send your share scheme stories to newspad

The Centre is always happy to publish in newspad stories from employee share scheme sponsor companies and/or their advisers about Eso schemes which have either matured, or launched recently. Readers like to know why specific schemes were launched, whether the main objectives were achieved, whether the schemes were financially successful and what the average employee participation rate was. Please email your share scheme information to newspad editor, Fred Hackworth, at: fhackworth@esopcentre.com for publication in the next issue.

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