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it's our business

newspad of the Employee Share Ownership Centre

EXCLUSIVE: IT bug delays annual share scheme statistics

Further online IT difficulties have forced HM Revenue & Customs to delay publication of the annual employee share scheme statistics, *newspad* can reveal.

HMRC has apologised to the Esop Centre for the long delay in publishing the annual employee statistics covering the fiscal year 2014–5, which should have been made available on its website on June 30 this year.

Once again, the culprit for the four month delay so far is the new online filing system, which caused massive problems last year when companies operating employee share schemes or award employees with shares or securities had to wrestle with partly defective or tortuous templates and formats for making their mandatory online annual returns for the tax year 2014–5.

To its credit, HMRC extended the deadlines given to companies for submitting the returns, suspended late filing automatic penalties and eventually managed to resolve the technical problems. However, the consequent delay in receiving and processing all the required share scheme returns hit HMRC's statistical publication schedule. Both the original June 30 and revised September 30 deadlines for publication of the 2014–5 share schemes statistics this year were missed.

An HMRC spokesperson told *newspad*: "The employee share schemes statistics were scheduled to be published on June 30 2016 but this was postponed following the introduction of a new online filing system.

"Difficulties encountered with the new system delayed the availability of data and this impacted on our work to produce the statistics. A new date for the update will be scheduled and published on the HMRC website.

"We apologise for the inconvenience."

These annual statistics give the industry key information on usage trends of the four tax advantaged schemes, namely SAYE-Sharesave, the Share Incentive Plan (SIP), the Company Share Option Plan (CSOP) and the share options based scheme exclusively for the SME sector – the Enterprise Management Incentive (EMI). Such information can influence investment decisions by share scheme providers.

The last published statistics, for the tax year ended April 6 2014, saw daylight on September 30 last year and are now very out of date. They showed that 11,400 UK companies were then using tax-advantaged share schemes, of which 9,820 were using the EMI. About 1,050 companies had CSOPs in place, 440 had SAYEs and 820 had SIPs. Many companies, especially the larger ones, were using combinations of schemes, such as an SAYE and a SIP, or a CSOP, simultaneously.

Although the take-up of CSOP looked superficially robust, additional HMRC statistics showed a sharp decline in the number of new CSOP options issued to employees. This prompted a campaign by the **Centre** to ensure the survival of the CSOP, which is very effective in incentivising the low-paid who often cannot afford to buy shares in a SIP, or indeed pay monthly contracted amounts into an SAYE-Sharesave.

Here's what *newspad* reported when the online reporting debacle first emerged, last August:

"The Employment Related Securities (ERS) online filing service has been plagued by 'technical difficulties', which forced an acutely embarrassed

From the Chairman

Executive reward has looked to the sty rather than the sky since the days when Cedric the pig of British Gas snouted the privatised trough. Now there is intellectual respectability at last as Nobel prizewinners join the fray. Last but not least in this edition of newspad I recommend you read how Fred Hackworth, newspad's editor, assesses the intervention. People with pensions, shareholders, employees and national economies all have an interest. Let us hope this is the beginning of a new understanding. I welcome comments from members and readers.

Malcolm Hurlston CBE

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HMRC to postpone its penalty regime for non-returns. It took a fortnight for HMRC's technical division to repair the internal systems failure, which prevented many share plan issuers and their advisers from filing their online annual share scheme returns before the original penalty deadline.

"HMRC identified particular issues over: companies registering the same plan more than once, perhaps in the mistaken belief that each launch of a plan constitutes a new plan, rather than simply another grant/award under the same plan; the same plan being registered repeatedly, for each subsidiary that operates it; and companies registering tax-advantaged plans in the wrong category (e.g. an SAYE scheme registered as a CSOP).

"There is no way yet devised to correct an entry made by mistake. A plan that has been registered incorrectly will be on the system and therefore an end -of-year return for that plan will have to be made, in which the plan should be reported as having ceased. In addition to which, those who have erred will have to register the plan correctly under a separate number.

"These filing requirements apply if any UK employees participate in a stock option, restricted stock unit or other stock based incentive plan linked to their employment, for example UK employees participating in a US stock incentive plan."

Earlier this year, in response, HMRC published improved templates which companies now have to use for their obligatory share scheme reporting. Centre member **Pinsent Masons (PM)** has tracked the revised online reporting templates and pronounced most of them to be reasonably workable for the 2015–6 tax year, though it criticised the complexity of the revised templates applying to the EMI. Comment by Pinsent Masons share plans and incentives experts Suzannah Crookes and Graeme Standen is worth quoting at length, because it illustrates the extent to which the regulatory burden has become a run-away train:

"The material amendments cover three aspects of share schemes:

* unrestricted market value of securities at the time of acquisition is now required, even if the securities are neither restricted nor convertible. This is an important change, given that employers may now need to return information which was not needed last year;

* actual market value, i.e. the restricted value, of restricted securities at the time of acquisition is no longer required if a section 431(1) joint election has been made by the employee and employer, which is sensible;

* internationally mobile employees (IMEs). Questions on most of the worksheets, that previously asked whether PAYE had been adjusted for amounts subject to the remittance basis, now refer to PAYE adjustment for amounts subject to apportionment for residence or duties outside the UK. This reflects the changes to IME taxation that came into effect from the start of tax year 2015/16.

"HMRC may have missed a chance to help employers with IMEs cope with these changes. The template and associated guidance seem to lack any prominent reminder that the IME changes will bring some employee shares and share awards into the scope of these annual returns for the first time in 2015/16," noted Pinsent Masons.

These will form the basis of the 2015–6 annual share schemes statistics to be published late next year.

"HMRC's guidance and technical notes have been expanded for all types of share scheme and are more readily accessible for this year as they can be downloaded, rather than needing to be requested from HMRC. In addition, they take the form of a specific note for each type of return.

"Despite improvements, there are aspects of the notes that users may not find as helpful or as clear as they could be. Companies and scheme administrators should bear this in mind when consulting them. For all types of return, there remain a couple of practical issues that template users would have liked to have seen improved.

"There is still no HMRC template for scheme participating company details, so large groups will need either to enter them all on the online return screen or create their own attachment for the purpose - or to re-use a file or files that they created last year, amended as necessary.

"In addition, there is still no capacity to submit Excel template files without first converting these to the .ods format used by the free spreadsheet software that HMRC prefers to use," added Pinsent Masons.

HMRC retains NICs election after lobbying battle

Employers who award senior employees unapproved shares or options can breathe more easily after the government caved into pressure to retain the NICs election facility, which protects them from liability in the event of non-payment by employees of their Class 1 NI Contributions.

This followed a consultation launched by HMRC to gather views and evidence from companies with non tax-advantaged share schemes about whether there was a need for the continued availability of a NIC election.

The **Esop Centre** was firmly opposed to the abolition of NIC elections.

HMRC said: "Government has carefully considered the responses generated by this consultation. Whilst there has been a change to the US accounting rules, it is clear that there is still a need to retain the NIC elections facility. They provide a protection that is not provided under NIC agreements."

Some respondents stated that NIC elections still had a purpose due to the fact that they were a legally binding protection for employers.

*****An NIC election is the legal transfer of liability for payment of secondary Class 1 NICs from the employer to the employee, with law requiring that elections must be approved by HMRC. When an employee makes a gain on exercise of an employment-related securities option, or realises some other chargeable event under section 479 Income Tax (Earnings and Pensions) Act 2003 (ITEPA), this is treated as earnings liable for Class 1 NICs. There will be a liability to pay both a primary and secondary Class 1 NIC. A primary Class 1 contribution is paid by the employee and a secondary Class 1 contribution is paid by the employer. However, in some circumstances the employee meets the secondary Class 1 NICs liability, this is when a NIC agreement or NIC election is required.

One respondent said that if the NIC election facility were removed, companies would have to consider the legal implications of only having the facility to enter into NIC agreements, and perhaps the implementation of 'sell to cover' to guard against liability exposure. A second said that if they were removed, there might be an increased risk for employers of not recovering secondary Class 1 NIC from employees. Another said that "in some instances the prospect of such a liability might act as a deterrent to offering share awards, particularly by fast growth SMEs contemplating a sale or flotation exit event as a trigger for option exercise". It was suggested by another respondent that there might be income tax disadvantages for employees if a NIC agreement is used but the NIC is reimbursed late (e.g. for reasons outside of the employee's control). Only one respondent said that NIC elections should be removed.

The HMRC decision, consultation on Employee Share Schemes: NIC elections" can be read at:
http://tinyurl.com/j5ham6c

EVENTS

Centre 2016 Awards reception & dinner

There's still time to book your place at the Esop Centre's fifteenth annual awards dinner. The black-tie reception and dinner will be held at the **Reform Club** in Pall Mall on the evening of **Tuesday November 22**.

Hosted by former chairman of the Reform, sports journalist **Mihir Bose**, the awards will pay tribute to those who have excelled in spreading employee share ownership in the UK and globally. The champagne reception and four-course dinner will be held in the grand Italianate surroundings of the Reform Club's library from 18:30.

Nominees: Competing for this year's Centre awards are **Aviva**, **Barratt Development**, **Chess Ltd**, **Computershare**, **DAI Global**, **Henderson Global Investors**, **Intertrust**, **Just Eat**, **Nokia, Randgold Resources**, and **Rio Tinto**, for:

- Best all-employee share plan in a company with more than 1,500 employees
- Best all-employee share plan in a company with fewer than 1,500 employees
- Best international all-employee share plan
- Best all-employee share plan communications
- Best financial education of employees

Tickets: Table of ten: £1,800; Member: £195 Non-member: £270

All prices are subject to standard UK VAT.

Places are limited so book at your earliest convenience. To reserve your tickets, please email events@esopcentre.com or call 020 7239 4971.

Plan issuers panel at Centre Symposium

A lively share plan issuers' panel is in prospect at the Centre's inaugural **British Isles, Brexit and Say on Pay** symposium, on **Wednesday November 23** & **Thursday November 24** at **White & Case**'s office in Old Broad Street, London EC2.

Companies like **BT**, **Signet** and **Smith & Nephew** will hear issuers' views on the current share plans regulatory regime, cross-borders taxation of plan participants, executive reward, Brexit and plan communications.

Hosted by legal giant White & Case, the symposium has attracted co-sponsorship from Channel Islands based trustees **Bedell Group** and **Estera** (formerly Appleby fiduciaries); plan administrators **Equatex.** Other sponsorship opportunities, such as the delegate handbook, are available.

During the day-and-a-half programme, the 'passporting' of financial services issue, including international share schemes, post Brexit, will be explored in depth, as will executive reward reform, corporate governance and regulation and share plans in action. Share scheme industry experts who will deliver topic presentations during the symposium include: **Nicholas Greenacre** of **White & Case**; **Stuart Bailey** of **Equatex UK**; **Catherine Gannon** of **Gannons**; **Graham Ward-Thompson** of **Howells Associates**; **Sara Cohen** of **Lewis Silkin**; **Juliette Graham** of **Linklaters**; **Liz Hunter** of **Mazars**; **Amanda Flint** of **Mercer**; **Stephen Woodhouse** of **Pett Franklin**; **Lynette Jacobs** of **Pinsent Masons**; **Jeremy Mindell** of **Primondell** and **Peter Parry** of the **UK Shareholders Association**.

Centre chairman **Malcolm Hurlston** will introduce the symposium, setting out his views on what could be done to revive the popularity of all-employee share schemes in the UK. He will outline key themes, such as Say on Pay, how to realign director remuneration, latest trends in executive reward, trustee issues and corporate governance.

Marquee speakers include **Sarah Wilson**, ceo of the proxy voting agency, **Manifest**, who will speak about executive reward reform. She will ask: Where's the workforce in corporate governance? Another segment of the programme, led by **Deputy Lyndon Trott**, chairman of **Guernsey Finance**, will explore the future of EBTs and Eso in the Crown Dependencies. **Paul Jackson** of **Investors' Chronicle** will help moderate the open session debate on new-look executive reward packages.

Plan issuers can attend for the modest outlay of **£175**, which is reduced to a mere admin fee of **£50** for Centre member issuers.

Practitioner delegate places are available from **£420**

All prices given are subject to standard UK VAT.

A buffet luncheon will be available on both days and an informal canapés and drinks reception, starting 17:00 after the first day's sessions.

To register for this event, please email the names of delegates to britishisles@esopcentre.com or call 020 7239 4971.

You can review the programme in the event brochure at www.esopcentre.com/events

EVENT REPORT

Time for PM to act, Guernsey delegates told

Centre chairman Malcolm Hurlston urged the government to promote employee share ownership in order to give a leg up to rank-and-file employees in the face of widening wealth disparities in the UK.

Introducing this year's **Centre-Society of Trust & Estate Practitioners (STEP**) share schemes conference for Guernsey trustees, Mr Hurlston said that if the prime minister was serious about tackling the gap between rich and poor, she would need to promote all-employee share schemes, as well as other strategies.

He said that the arrival of Theresa May at 10 Downing Street had been more of a revolution than expected. She could start by improving the rules governing the **Employee Ownership Trust (EOT**), to make it more commercially viable. The EOT was proving to be an extremely effective mechanism for convincing business owners to sell to their employees, but the 2014 legislation needed tidying up, Mr Hurlston told delegates.

"The legislation was not perfect. As a product of the former Lib-Dem dominated Business Department, the Treasury had very little input. We at the Centre will be lobbying the government to tidy up the legislation as it currently stands," he explained.

Highlighting the power of simple messages, the chairman said that the **John Lewis Partnership** was all too often used as the prime example of an employee owned business, despite the model's many flaws – for example giving its employees annual *cash* bonuses, instead of employee equity. However, oversimplified phrases like the 'John Lewis model' or the 'John Lewis economy' had served an important purpose because politicians and journalists had found it an easier concept to understand than other forms of employee ownership.

Martin Popplewell of **Deloitte**, gave a presentation on the Common Reporting Standard (CRS). He said that 101 jurisdictions had signed up to CRS and reporting was due to start in Guernsey from January 1 2017. While Guernsey had produced extensive guidance for the intergovernmental FATCA (Foreign Accounts Tax Compliance Act) agreement with the US, it had opted for the opposite approach for CRS, given the detailed documentation provided by the OECD. Other jurisdictions had taken a different approach and Mr Popplewell suggested that Jersey may need to rein back on its comprehensive guidance to ensure it passed OECD review. Both Channel Islands may want to consider HMRC's approach which had combined all of its automatic exchange of information guidance (US FATCA and CRS) into one document.

David Craddock of **David Craddock Consultancy Services** discussed share valuation in the wake of HMRC's withdrawal of the post transaction valuation check (PTVC) earlier this year. Share valuation is an art, not a science and he gave delegates a brief but comprehensive overview of the complex process. An expanded version of the talk is available on request for those who attended the conference. The Centre is working on a guidance document for members.

The first session closed with a panel discussion during which **Alison MacKrill** of **Carey Olsen** (and former chairman of **STEP Guernsey**) and **Elaine Graham** of **Zedra** focused on why the Channel Islands remain the jurisdictions of choice from which to run EBTs. The panellists provided a brief history of the trust industry, going back to the introduction of the employee share ownership trust in the 1980s (when the Centre developed the 'twin trust' Esop lookalike) through to the decline in EBTs following the post financial crisis attack on all things 'offshore' and their relatively recent revival. The Channel Islands are home to an advanced fiduciary service industry, and those in the room were hard put to name an onshore trust company that can compete. At the Centre's conference in Jersey earlier in the year, trustees had said they were reluctant to become EOT trustees because of the controlling equity stake involved. The trustees in Guernsey understood these concerns, but were sure they could be overcome and welcomed the opportunities the EOT would bring.

After the break **Stephen Woodhouse** of **Pett Franklin** examined share schemes and tax planning. In recent years the boundary between tax avoidance and tax evasion had faded, he said. HMRC now took the view that tax avoidance involved using the tax system to gain a tax advantage that Parliament did not intend. It had issued guidance on how to spot tax avoidance and had even set up a co-ordinated taskforce dedicated to rooting out tax avoidance schemes. There was a danger that HMRC would target share schemes - especially non-tax-advantaged plans - and the use of offshore trusts, as alleged tax avoidance, he added.

The government had explicitly targeted Employee Benefit Trusts in the Budget earlier this year, as **Juliet Halfhead** of **Deloitte** explained. From April 6 2019 income tax and NICs would be charged on outstanding loans to beneficiaries of EBTs. The technical consultation has closed and employers/ beneficiaries have less than six months to reach a settlement with HMRC concerning outstanding EBT liabilities. Binding agreements secured before April 1 2017 would help mitigate the impact of the loan charge and secure tax relief on investment growth.

Ms MacKrill provided her outstanding annual update on legal cases that affect the day-to-day work of trustees. 2015 saw the first case under Guernsey law involving the rule of Hastings-Bass (*HCS Trustees Limited* v *Camperio Legal and Fiduciary Services plc* [2015]), but its precise scope has not been tested and it is likely to follow English law in the absence of legislation. 2016 had seen the first case concerning mistake in Guernsey (*Gresh* [2016]), where the test is the same as in England – a mistake had to be serious and not mere ignorance or inadvertence. With Jersey amending its laws and the Isle of Man unlikely to apply English law, Guernsey's position was uncertain and it was suggested that either a change of approach from the courts or an amendment to Trusts (Guernsey) Law 2007 was desirable.

The keynote address was delivered by Deputy **Peter Ferbrache**, **Guernsey States** president of the Economic Development Committee, a new position introduced following its general election earlier in the year. Deputy Ferbrache explained that the purpose of his committee was to bring prosperity to Guernsey. He echoed the earlier panel discussion in describing trust companies in Guernsey as some of the best in the world. Guernsey's sophisticated and well-regulated trust services had to prosper if the island was to prosper. Deputy Ferbrache explained that he had seen the benefits of employee share ownership for himself since a company he had been involved with saw its profits double after implementing a share scheme. He said: "If you own your own prosperity, you maintain it better and the same principle applies when employees own shares in their company." He commended the conference and said he would need to work with the Centre and its members to achieve his committee's purpose.

Mr Ferbrache said afterwards: "I really enjoyed my morning at the conference. It was more interesting frankly than I thought it would be. It was one of those events I went to that I can honestly say I enjoyed and got benefit from. That is far from the case on many occasions."

MOVERS AND SHAKERS

Andrew Udale, former partner at **New Bridge Street** (part of the **Aon Hewitt** global consultancy) is half-way through a period of gardening leave before he leaves the firm. **Matthew Ward**, who heads the share schemes division, will replace Andrew as the Centre's main contact.

Patrick Jones, group director at Centre member trustee **Estera Group**, is now responsible for its corporate service business, as well as employee share trusts. "My principal focus remains share plans, but I am also taking the lead on corporate matters in other jurisdictions too," Patrick told *newspad*.

Centre member **Global Shares** has moved to a larger office after its recent success in the UK, winning five FTSE 100 clients in the last six months. Its new location is in the heart of the City at No.1 Bengal Court, Birchin Lane, London EC3V 9DD. It will be the base for its UK and Rest of the World team including **John Meehan** – md & head of business development team; **Mike Baker** – head of business development EMEA; **Brian Purcell**, business development executive and **Richard Scorer** – client implementation manager. Global Shares has made significant changes to its website too.

Academic cloisters are claiming **Centre** stalwart **Mike Landon**, share plan director at executive remuneration consultancy **MM & K**. Mike has started a part-time university course (on the economics of climate change). He continues to work for MM&K, but on significantly reduced hours. In the circumstances, he has resigned from the Esop Centre steering committee and has recommended his colleague, **Stuart James**, as his replacement. Mike told *newspad*: "I will, of course, keep a close interest in employee share plans, in particular those with tax advantages and which are extended to employees generally. I would be happy to provide input to Esop Centre representations in the future, especially in the case of the SIP and CSOP." Michael can be found at: Tel: 020 7283 7200 Mobile: 07789 402 644.

Centre chairman **Malcolm Hurlston** said: "I greatly welcome your offer to say part of the all-employee policy team. It will be good to have your comments, especially on CSOP, when the statistics struggle out. I shall invite your colleague Stuart to join the steering committee."

Following the acquisition of Centre member **Sweett Group** by **Currie & Brown**, **Patrick Sinclair** has left Sweett. Following the offer by Currie & Brown, a leading physical assets management and construction consultancy, it was announced that Sweett had been delisted. The combined company will employ 2,200 in 60 offices in the Americas, Europe, India, the Middle East, the UK and the US. The cost of the purchase was not given. The integration process is well under way and Sweett Group will continue to trade as Sweett only until November 9, after which it will trade under the Currie & Brown name. For all queries please contact James Murray : james.murray@sweettgroup.com.

Members

Centre member **Solium Capital**, the leading global provider of software-as-a-service for equity administration, financial reporting and compliance, announced the opening of a new operating centre in Barcelona, supporting the company's growing international customer and participant base, especially in the EMEA (Europe, the Middle East & Africa) region.

"Over the last year we've seen strong growth in new customers across the EMEA region, in particular Continental Europe, and we expect the momentum to continue," said Brian Craig, Solium's md, EMEA. "We now have the ability to offer client and participant support in most native European languages, a key competitive advantage that will help us expand our leadership position in the region. In addition, Barcelona is a world class city that attracts world class talent, making it a great location from which to expand our services."

Marcos Lopez, Solium's ceo, said: "We are committed to being the leading global plan administrator in the industry. Barcelona provides a strategic additional location to continue building this promise to our customers and the market. Solium is the only administrator operating in North America, Europe and Asia on a single technology and service platform - enabling our global customers to leverage support from all of our global offices seamlessly."

Solium's Barcelona office is a multilingual client and participant service centre supporting its European and global customers. It is the hub for the company's *Shareworks* Global Compliance product, an online database of legal and tax regulations that spans more than 170 countries. Solium began staffing the client service centre in July this year and 20 full time staff are already based there.

"We are thrilled that Solium has decided to build its facility in Barcelona," said Núria Betriu, dg of Industry, Catalonia Government Department of Trade and Industry. "Solium's decision to invest in our region and create jobs in the technology sector is one that we hope other companies will replicate. We look forward to the company's continued success and the growth of the office in Barcelona." From offices in the US, Canada, the UK, Europe and Australia, Solium's innovative software-as-a-service (SaaS) technology powers share plan administration and equity transactions for more than 3,000 corporate clients with employee participants in more than 100 countries.

Centre member **YBS Share Plans** (Yorkshire Building Society) is partnering **Investec Bank** to offer discretionary share plans to corporate clients for the first time. The collaboration offers companies a fully integrated, web-based administration system operated trading platform for global employees. Operated by YBS Share Plans and its experienced call centre team, the platform will deliver real-time equity execution and sales trading via Investec Bank's infrastructure. This will enable YBS Share Plans to offer discretionary share plans services to executive clients for the first time in its 36 year history, alongside all employee plans. The trusted partnership has already secured two major clients – **The Go-Ahead Group** and **Kier Group**.

Ashley Price, head of YBS Share Plans, said: "There isn't a collaboration of this kind in the marketplace – this is a special relationship between two very successful companies that are both driven by providing a first class customer experience. Investec is highly respected for its proven track record in brokering and wealth services and we're delighted to be able to work with them in the UK."

Investec's head of share plans, Rodney Marthinusen, said: "The combined offering through a single service would be quite unique in the UK by providing an integrated solution for all share plan types in one place." Contact: **Louise Drake** national sales manager, growth & acquisition, YBS Share Plans.

People

Nobel Prize winners: British-born **Oliver Hart** and Finland's **Bengt Holmstrom** won the **Nobel Economics Prize** for work on how best to reward executives and the laws of contract. Their findings on contract theory have implications in such areas as corporate governance, bankruptcy law and political constitutions, said the **Royal Swedish Academy of Sciences**, which announced the 8m Swedish crowns (£760,000) prize. "This theory has really been incredibly important, not just for economics, but for other social sciences," said Per Stromberg, a member of the prize committee and professor at the Stockholm School of Economics. Contract theory considers, for example, whether managers should get paid bonuses or stock options, or whether teachers or healthcare workers should be paid fixed rates or by performance-based criteria.

Hart, an economics professor at **Harvard University**, focused on understanding which companies should merge and with what mix of financing and when institutions such as schools, prisons and hospitals should be privately or publicly owned. He has argued that the incentives for cost reductions in privatized services, such as private prisons in the US, are typically too strong.

Holmstrom, a 67-year-old professor of economics and management at the **Massachusetts Institute of Technology**, said he had been friends with Hart for decades and was thrilled to be sharing the award with him.

Holmström is one of the most famous and influential economists in the field of contracts and industrial organization. One key question he considered is when incentives should be high-powered or when they should be more blunt. It is now well known that you get what you pay for. Holmström studied the setting of contracts for workers from teachers to corporate bosses. He concluded that in high-risk industries, pay should lean toward a fixed salary, while in more stable sectors, pay should be more biased toward performance rewards.

His most famous paper is his 1979 'Moral Hazard and Observability'. What are the optimal sharing rules when the principal can observe outcomes but not efforts or inputs? And how might those sharing rules lead to a less than optimal result? This is probably the most elegant and most influential statement of how direct incentives and insurance value in a contract can conflict and hinder efficiency.

On ceo compensation, Holmström said: "an optimal contract should link payment to all outcomes that can potentially provide information about actions that have been taken. This informative principle does not merely say that payments should depend on outcomes that can be affected by agents. For example, suppose the agent is a manager whose actions influence her own firm's share price, but not share prices of other firms. Does that mean that the manager's pay should depend only on her firm's share price? The answer is no. Since share prices reflect other factors in the economy – outside the manager's control – simply linking compensation to the firm's share price will reward the manager for good luck and punish her for bad luck. It is better to link the manager's pay to her firm's share price relative to those of other, similar firms (such as those in the same industry) – i.e. peer group benchmarking.

That is a conclusion about how incentives and insurance interact. When do you pay based on perceived effort and when on the basis of observed outcomes, such as profits or share price?

'Moral Hazard in Teams' is a very influential 1982 paper. Holmström showed that the optimal incentive scheme has to consider time consistency. Sometimes, good incentive schemes impose penalties on the workers/agents to get them to work harder. However, in a worker-owned and worker-run firm will the workers/owner impose punishments on themselves if the business declines? Maybe not. Thus in a fairly general class of situations you need an outside residual claimant to impose and receive the penalty. This is Holmström trying to justify one feature of the capitalist system against socialists and Marxists.

'Managerial Incentive Problems: A Dynamic Perspective' is another important paper. The key point is that repeated interactions, for instance with a manager, can make incentive problems worse rather than better. The more the shareholders monitor a manager, for instance, and the more that is over a longer period of time, perhaps the manager has a greater incentive to manipulate signals of value. When are career incentives beneficial or harmful? This paper is the starting point in thinking through this problem. One possible trap is: if a worker fully reveals his or her quality to the boss, the boss will use that information to capture more surplus from the worker. So many workers don't let on just how talented they are, so they can slack more, rather than being caught up in the dragnet of a 'super-efficient' incentives scheme.

UK CORNER

Executive reward

Legal & General Investment Management (LGIM) issued a letter highlighting its views on executive remuneration, which companies may want to consider as they review their policy and start to prepare their remuneration reports.

Remuneration committee structure and stakeholder engagement:

- An individual should have served on the board for at least a year prior to becoming committee chairman.
- Committees should seek independent advice and make themselves aware of the views of their largest shareholders.
- In case of significant level of dissent (>20 percent), the committee should consider re-tendering the adviser's engagement and publish an explanation for the dissent and what the Board intends to do to address those concerns.
- When setting executive pay, the committee should consider and demonstrate how it took into account the policy applicable to all staff and should be willing to meet at least annually with employee representatives.

Committees should engage with shareholders on significant changes prior to a vote.

- Why the outcome of the single figure is appropriate taking account of delivery of KPIs, employee pay and shareholder experience in terms of value created.
- Why the chosen remuneration award level is appropriate for the company refraining from using benchmarking as its main argument.
- The pay ratio between the ceo's total single figure and the median employee as disclosed in the financial statements.
- Evidence of the exercise of discretion over the past five to ten years.
- The breakdown of fees paid to remuneration consultants, i.e. between fees for executive remuneration advice and fees for other pay related services to the company.

Quantum:

- The board should consider the wider impact of executive pay (on workforce, general public…), the impact of increases to individual elements of remuneration on other elements and question whether the total package is appropriate. Benchmarking should only happen periodically, i.e. once in three years and attention should be paid to relative performance as well as size of the companies in the comparator group.
- LGIM encourages a reduction of annual bonus levels (200 percent of salary only for the largest global companies).
- Pension arrangements should be reduced over time so that they are more closely aligned with those of the general workforce.

Remuneration structures:

- LGIM advocates the use of only one Long Term Incentive Plan (LTIP) with no more than four performance measures. Long-term is defined as a minimum of three years.
- LGIM will generally oppose matching plan (new or renewal).
- Shareholding requirements should be significant and relate to the size of annual share based awards and at least half of the shareholding should be maintained for two years post retirement.
- Bonus should be paid in cash and shares deferred for two to three years.

Performance metrics & targets:

- The board should determine what the right metrics are to deliver the strategy, and what level of stretch in the target is appropriate to deliver the right outcomes for all stakeholders.
- Performance targets should use the reported numbers without further adjustments, save for share buy-backs and other capital changes. Any adjustments should be consistent, explained and reconciled with reported numbers.
- LTI performance targets should be disclosed prospectively and short-term annual bonus targets retrospectively. Commercially sensitive targets should be disclosed retrospectively, within two years. Companies should disclose as many of the bonus targets as possible to highlight the integrity of the target setting process. Strategic/qualitative and personal targets should be fully explained.
- Claw-back and malus should apply to all elements of performance related pay and be fully explained.
- *Restricted shares:*
- Companies will have to justify why this type of arrangement is appropriate and why the existing arrangement is no longer suitable.
- The company should demonstrate a history of sensible approach to remuneration (e.g. no high votes against, examples of appropriate use of discretion/judgement).
- Award levels should be reduced by at least 50 percent of the normal long term incentive grant to take into account certainty.
- This should be a long-term scheme that is applied through different business cycles.
- Shareholding guidelines would have to be at least 2x salary (higher for FTSE 100 companies) and maintained for at least two years post exit.
- For leavers unvested restricted shares should be pro-rated for time and subject to the same vesting time frame and holding requirements as set out above.
- Discretion should be applied to reduce awards if at the end of the holding period the performance of the company and the shareholder experience is not aligned.
- Annual bonus targets should be disclosed in full, retrospectively, if not in advance.

Recruitment & departures:

- A new executive director's remuneration should be set taking into account their level of experience in the role with a view to reaching a market rate over time, subject to performance.
- New recruits should be encouraged to purchase shares in the company.
- The use of golden hellos and goodbyes is not supported.
- The use of buy-out awards is discouraged. Any buy-out awards considered necessary, in exceptional circumstances, should be explained and awarded predominantly in shares.
- Additional employee benefits of moving residence should have a time limit.
- Except in cases of dismissal for conduct or to avoid payment for failure, share based awards outstanding should be time pro-rated and subject to the same vesting conditions that applied at grant.

Centre member **Deloitte** said: "We welcome clear guidance and views from institutional investors. The LGIM principles echo a number of comments and expectations made by other stakeholders including the recently updated GC 100 and Investor Group guidance on Remuneration Reports and the Executive Remuneration Working group (ERWG) final report.

"We continue to support simple and transparent arrangements aligned with the business strategy and company performance and we do agree reward policies and outcomes need to be set out clearly in the annual report. We agree that more attention needs to be paid to pay levels and conditions within the organisation but we are unsure the disclosure of a ceo-to-average-employee ratio will necessarily be helpful.

"We do however believe that a ratio (maybe more sophisticated than data taken from the financial statements) and other internal data should be part of a set of information provided to the committee on employee pay to support their informed decisions on executive pay structure and outcomes.

"Whilst we do agree that recruitment packages should not be excessive, we question whether it is realistic to avoid buy-out if a company seeks to recruit a successful candidate from another firm. We do note that LGIM can support buy out when clearly explained.

"We believe companies need the flexibility to adopt the structure that best supports their strategy. Whilst the LGIM views are clearly stated, some aspects are rather prescriptive and may not reflect the views of other investors. Undoubtedly, as stated in the LGIM principles, companies do need to be aware of the views of their main shareholders, but it would be helpful for investors to have greater consistency across a set of principles they all adhere to. As it may not be possible for investors to agree on all points, investors do need to appreciate that companies will need to decide what is best for their business, having regards to sometimes conflicting views."

*However, LGIM fell short of supporting **PM Theresa May**'s proposal to put rank-and-file employees on boards. Instead, LGIM backed a half-way house solution involving setting up a special purpose committee of employee representatives, who should play a role by "meeting the remuneration committee annually to ask why it considers the pay practices applied in the organisation to be fair," said Angeli Benham, senior corporate governance manager at LGIM in a research paper. Benham said: "Companies should not forget that workers are their most valuable asset and success would not be delivered without their effort. Companies that are exercising restraint, cutting costs and headcount should be sensitive if they are increasing executive pay too. All employees, regardless of the health of the company, should be recognised for their contribution to the success of business."

Citing research by the left-leaning **High Pay Centre** showing pay for FTSE 100 bosses increased 146 percent from 2000 to 2013 compared to 43 percent for all employees of FTSE 100 firms, Benham said inequality "has a material impact on society. This inequality, and the furore that surrounds executive pay, can no longer be ignored. High pay does not always guarantee performance. Total pay for executive directors, particularly ceos, has increased sharply over the past decade. When compared to the performance of the market, the increasing level of executive pay is becoming difficult to justify."

Parliamentary corporate governance inquiry

The cross-party **Business, Innovation, and Skills (BIS) Committee** launched an inquiry on corporate governance. It focuses on executive pay, directors duties, and the composition of boardrooms, including worker representation and gender balance in executive positions. The deadline for written submissions, under the consultation rules passed a few days ago (October 26).

The inquiry follows on from recent inquiries by the Committee into the corporate governance failings at two large UK retailers, **BHS** and **Sports Direct**, and in the wake of the commitments made by the Prime Minister to overhaul corporate governance. The objectives of the inquiry include:

***Directors duties -** to examine whether company law is sufficiently clear on the role of directors and non-executive directors and look at how the interests of shareholders and employees are best balanced. The inquiry will look at how to increase shareholder and public confidence that executives are subject to sufficient independent challenge and whether companies should face additional duties in order to promote greater transparency.

***Executive pay -** to examine whether executive pay should take account of companies' long-term performance and explore whether executive pay should reflect the value added by executives relative to junior employees. It will look at whether executive pay is currently too high and what has led to the steep rise in recent years compared to salaries of more junior employees. The inquiry will look too at whether the current framework for controlling executive pay is working or whether shareholders need a greater say.

***Composition of boards -** to examine whether diversity leads to better performance and what more should be done to increase the number of women (and other minorities) in executive positions. The inquiry will explore proposals on worker representation on boards and remuneration committees, focussing on how this would work, the numbers of employees that could be put on boards, and what the selection process may look like.

Tapestry Comment**:** "The UK's approach to corporate governance sets some of the highest standards in the world. Many companies strive to achieve those high standards. Corporate governance has been continuously under review since then, with the Greenbury Report, Hampel Report, Higgs and then the assimilation into the UK Corporate Governance Code, in addition to the work of BIS to significantly increase disclosure and involve shareholders.

"It is therefore unfortunate when there are a few high-profile corporate failures, like BHS, that this prompts further political inquiry into what needs to be done. There has been so much change in the last few years - is more needed now? Have the changes already made, like the increased disclosure, the use of malus and claw-back, the need to have longer retention periods and increased diversity on boards, had the chance to be properly embedded? Theresa May made it clear during her campaign process that she wanted to get 'tough on corporate responsibility', a position that was quickly reaffirmed after becoming Prime Minister. The proposals are geared towards reducing 'corporate irresponsibility' by ensuring that directors' duties are robust (these were reviewed and codified in the

Companies Act 2006 and are very robust), that executive remuneration is subject to scrutiny from shareholders (there was significant increase in disclosure when the new Directors' Remuneration Report requirements came in only 3 years ago), the public, and employees, and by ensuring that boards and remuneration committees include worker representation and are more diverse. It is highly likely that the inquiry will lead to further change. It is therefore important that those with views on aspects under review do comment. We will be commenting through a number of industry groups."

Pensions at work: Auto enrolment

Last year, membership of occupational pension schemes reached its highest level recorded in the **Office for National Statistics (ONS)** annual survey. The 2015 total of 33.5m was ten percent up on the 2014 figure of 30.4m. The ONS survey breaks membership down into three groups: active members, that is current members who would normally contribute; pensioner members who are drawing their pensions; and members with preserved pension entitlements, that is, members who are no longer actively contributing into the scheme, but have accrued rights that will come into payment at some point in the future. Active membership numbers are estimated to have grown to 11.1m in 2015 from 8.1m in 2013 and 10.2m in 2014. The increase, almost entirely in the private sector, is likely to be due to the establishment of auto-enrolment Estimates for the private sector, which show a significant increase from 2.8m to 5.5m between 2013 and 2015. The growth in the public sector was lower, as numbers increased from 5.3m in 2013 to 5.6m last year. Active membership of private defined benefit (DB) schemes has remained at around 1.6m over the past three years. Meanwhile, active membership of private defined contribution (DC) schemes has increased from 1.2m in 2013 to 3.9m last year.

Estimates for contribution rates were broadly comparable over the past two years, but, as in past years, private sector DB schemes had higher contribution rates than DC schemes. In 2015, the estimated average total contribution rate for DB schemes was 21 percent of pensionable earnings, broken down by five percent for members and 16 percent for employers. For DC schemes, the average total contribution rate was four percent of pensionable earnings with 1.5 percent coming from members and 2.5 percent from employers.

Minimum pay rates

Our thanks to Centre member **Bird & Bird** for providing the numbers below:

From the first of last month (October), the **National Minimum Wage (NMW)** rate for a range of younger employees increased:

- To £6.95 (from £6.70) for employees aged 21 to 24
- To £5.55 (from £5.30) for employees aged 18 to 20
- To £4.00 (from £3.87) for employees under 18
- To £3.40 (from £3.30) for apprentices aged under 19, or aged over 19 but in the first year of their apprenticeship.

There was no change to the basic NLW of £7.20 per hour, which applies to employees aged 25 and over. It will next be reviewed in April next year.

Final rules on financial regulatory references

The regulatory references regime is part of a wider package of reforms aimed at improving accountability in financial services. The FCA and the PRA have issued long awaited policy statements (PS16/22 and PS27/16) setting out feedback on consultation and the final rules on regulatory references. Regulatory references are primarily a tool for firms not regulators and it is hoped that best practice will develop to address misconduct and assess fitness and propriety, said lawyers Eversheds Each policy statement contains a revised regulatory references template alongside the final sets of rules. The rules can be read at http://tinyurl.com/hlyev43 and at http://tinyurl.com/z4e4d24

COMPANIES

New GAAP Eso rule cuts Facebook UK's tax bill

Facebook UK reduced its tax bill by £25m last year because it gave £71m worth of share options to its UK staff and so will claim a tax break when they vest. It booked the tax deduction because it now expects to make UK taxable profits in the coming years following its decision to book advertising sales in the UK, rather than in Ireland.

Facebook said a deferred tax credit, worth £11.3m, arises because new GAAP (FRS 101) accounting rules recognise staff share awards on the basis that "It is probable there will be sufficient future taxable profits against which the deductible temporary differences can be utilised". This means the value of the shares at the time of the deduction is the critical figure – if the shares are worth much more then, the deduction could be bigger still (and vice versa if Facebook shares fall).

Centre member **Deloitte** pointed out that HMRC has revised two papers which summarise the key accounting changes and tax implications that arise for companies that change from old UK GAAP to FRS 101 or FRS 102. They were last updated in August this year. Neither paper has yet been updated for changes included in Finance (No.2) Act 2015 or Finance Act 2016, added Deloitte. See http://deloi.tt/2byBRgj

The total charge for Facebook UK's employee share based payment plans was £71m (2014: £35.4m) which resulted in an after tax loss of £41.16m (2014: £28.48m loss).

The company reported a loss from its UK operations in the 2014 calendar year under an arrangement which treated the UK operation's revenues as a payment from Facebook Ireland for services. Facebook paid only £4.16m in UK Corporation Tax (CT) last year, despite turnover more than doubling to £210m. The social network posted a £20m taxable profit for the year to December 31, on which it paid CT at the standard rate.

The latest results followed an outcry in October last year, when Facebook was found to have paid just £4,327 in UK corporation tax for 2014. The same line in the company's accounts this year showed no tax, but instead a credit of £11.3m.

Facebook said earlier that it would no longer route advertising sales through Ireland for its largest advertisers. That change, which took effect on April 1, *should* mean the US company starts paying millions of pounds more in tax in the UK.

A spokesperson for Facebook said: "We are proud that in 2015 we have continued to grow our business in the UK and created more than 300 new high skilled jobs. We pay all the taxes that we are required to under UK law."

Richard Murphy, a chartered accountant and professor of international political economy at City University, said it was difficult to determine whether Facebook was paying the right amount of UK tax. "The Facebook UK accounts just record the costs it incurs in the UK, with a bit of profit added on to keep HMRC happy. That's not good enough in the current climate. Facebook UK's accounts are an exercise in opacity when what we really need is transparency. If accountants continue to refuse to provide what users of accounts need then it will be time for the government to act."

Facebook's 682 UK staff received an average of £242,557 in total compensation (pay, social contributions and share options) in 2015, up from £238,384 each in 2014. The company increased its overall headcount by more than 300 during the year.

In 2015, Facebook booked no direct sales through its UK operation, instead defining its UK operations as "providing sales support, marketing services and engineering support to the Facebook group" – basically working as an administration centre. This structure meant Facebook UK registered an overall UK loss of £41m on revenues of £210m. Globally, Facebook made profits of \$3.7bn in 2015 on revenues of almost \$18bn – 44 percent higher than the previous year.

MPs have criticised the deal **Google** reached with HMRC to pay £130m in back-dated UK taxes. In her keynote speech to the recent Tory annual conference, PM Theresa May warned international companies who treat tax laws "as an optional extra" that "this can't go on anymore".

Nokia one free for every two shares bought award

Nokia, a global leader in connectivity, announced the transfer of 1.67m Nokia shares to employees participating in the Nokia Employee Share Purchase Plan (ESPP) 2015. The savings period of the ESPP 2015 ended on June 30. Nokia offered one matching share for every two shares purchased under the plan which the participant still held on July 31. Additionally, the Board decided to issue a maximum 610 300 Nokia free shares to employees participating in the ESPP 2016. The plan savings period started on July 1 and ends on June 30, next year. This distribution will deliver 20 free shares to every participant making the first three consecutive monthly share purchases within the plan's rules. The shares under the ESPP 2015 were delivered to the employees last month and the shares under the ESPP 2016 will be delivered on November 16. The Board approved the launch of the ESPPs 2015 and 2016 to encourage employee share ownership, commitment and engagement.

Most posties retain their shares

Only a small proportion of **Royal Mail** (**RM**) staff sold their Share Incentive Plan (SIP) free shares in the company within the first ten days of being allowed to do so. October 15 was the first chance they had to sell them after RM was privatised in 2013 in a £3.3bn deal. Sky News reported that just 'a few thousand' employees were selling their shares, out of about 139,000 employees who are eligible to do so. *Newspad* reported exclusively last month that most postal employees were expected to hang on to the first batch – 613 – of their free SIP shares for at least another two years, after which they could sell them free of income tax and NICs. The **Communication Workers Union** has advised the posties, its members, to hold onto their shares. Collectively, they own 12 percent of RM. The batch of 613 shares was worth £3,000 at the October 24 closing price of 490p per share.

TRUSTEE NEWS

One key concern for the **British Virgin Islands** (**BVI**), particularly its funds industry, is the loss of the UK's influence in developing EU regulation and legislation affecting the financial services industry, following the Brexit decision, said lawyers **Harney Westwood & Riegels**. Another aspect of concern stemming from this loss of influence is the EU's attempt to create a list by the end of 2017 of what Brussels describes as its "common EU list of problematic tax jurisdictions". A similar exercise is being conducted by the **Organisation for Economic Cooperation and Development (OECD)** based on objective criteria, including compliance with the OECD's standards for exchange of tax information – on which the BVI and other UK crown dependencies and overseas territories rank highly. In contrast, the EU process is highly political. With the UK absent or marginalised in negotiations, there is a real risk that this list may become primarily an attack on low-tax jurisdictions.

This could be problematic for the BVI despite its full compliance with OECD transparency requirements and the Financial Action Task Force anti-money laundering and terrorist financing standards.

That has not been enough for companies like Asian Growth Properties which has relocated to Bermuda for reasons of fragrancy.

Channel Islands based trustees may wonder whether they too could come under pressure from Brussels following the UK's Brexit decision. Uncertainty rules. On the one hand, it could stall economic activity as businesses delay investment and expansion decisions and investors stall or lose confidence and pull out; indeed, a number of UK real estate funds had to suspend redemptions temporarily due to liquidity pressures. On the other hand, fund managers and other businesses that thrive on market volatility may do very well as a consequence of this uncertainty.

WORLD NEWSPAD

The level of employee financial participation in **France** has fallen by almost a million to three million, still more than in the UK - during the last two years, largely due to an anti-Eso tax regime imposed by the socialist government of Francois Hollande.

The **Irish** Minister for Finance Michael Noonan announced that the Irish government was developing a new share based incentive arrangement for SMEs, to be introduced in Budget 2018, reported Irish corporate lawyers **A&L Goodbody**. More details will follow once European Commission approval has been obtained for the new proposals, under state aid rules. This development comes on the back of a government commitment to encourage employee financial participation, evidenced by the formal consultation launched last summer to review ways to more effectively incentivise entrepreneurship, in particular to consider the tax treatment of share based remuneration.

US: **Wells Fargo**'s ceo and chairman, John Stumpf, finally resigned from both the bank and the board in the wake of the scandal over its sales practices. Stumpf "will not receive any severance payment", a Wells Fargo spokeswoman confirmed to the *Guardian.* In September, Wells Fargo announced that it had reached a $185m settlement with US regulators for its illegal sales practices. Since 2011 the bank fired more than 5,300 employees for opening more than two million accounts *without customers' permission* and then charging them monthly fees. The former employees opened these unauthorized accounts to meet the sales quotas imposed by the company. Wells Fargo has now terminated the practice of setting sales quotas in its retail banking after an internal investigation was launched. Stumpf gave up his salary recently. In 2015 he made $19.3m (£16m) In addition, he forfeited about $41m (£34m) in unvested equity awards in the aftermath of the scandal.

In recent years, what could be considered excessive US director pay has inspired litigation from shareholders leading to the emergence of new best practices, including director compensation limits, said the US corporate research company **Equilar**. According to their research, 80 percent of companies in the S&P 100 proposed or amended an incentive plan involving directors in proxies filed between January 2011 and September 30 2016. Of those companies, almost 30 percent explicitly mentioned a dollar value cap on director awards, and more than half of these dollar value caps were disclosed in a proxy filed in 2016. In addition, although 41 percent of these incentive plans mentioned some sort of cap on the number of shares of an award that applied to directors, many were in the hundreds of thousands or millions of dollar***s*** and designed for executives. Just 16 percent of proposals mentioned a cap on number of shares explicitly referring to non-employee directors, and these limits were anywhere between 6,000 to 100,000 shares.

Cash and equity are administered to board members under a plan proposed by the board and approved by shareholders. Plans have expiration dates, normally lasting between five and ten years and it is becoming more common for new and amended plans to have compensation limits to prevent excessive annual increases in pay. An Agenda Week article described nine recent examples of S&P 500 companies that have faced litigation for the lack of meaningful pay limits or the lack of a pay limit altogether. This litigation can be costly, and just having a pay limit is not enough for companies to prevent a suit. In many of these cited cases, boards did have pay limits, but they were more than ten times the amount that directors were currently receiving.

Additionally, limits on the number of shares awarded are susceptible to significant variations based on share price, so the most well received restrictions are dollar-based limits. Director pay caps are increasing in prevalence, and while over 70 percent of recent incentive plans mention some sort of limit that is applicable to directors, many are designed with executive compensation in mind and the ones designed for directors vary significantly as well. Given that shareholders are now much more attuned to director compensation and appropriate pay limits, newer proposals are much more likely to mention some sort of cap for director compensation.

Shareholders have even sued companies on the grounds of excessive pay and lack of compensation caps. In these cases, the plaintiffs are drawing comparisons to lesser paid board members at peer companies, alleging that the defendants are benchmarking to 'aspirational peers,' i.e. justifying their pay by cherry-picking peer groups instead of aligning their pay with companies that reflect their actual market position.

Directors are taking on a combination of increased risk and increased responsibility, especially in light of Dodd-Frank and its subsequent regulatory changes. Board directors are now facing more disclosures, regulations, guidelines and a more complex business environment, and are accountable for communicating their companies' strategic and financial goals, the article concluded.

South Africa: Global steel producer **ArcelorMittal'**s **SA** (Amsa) signed a new black economic empowerment deal representing a 17 percent shareholding in the business with **Likamva Resources**. In addition, the company allocated a five percent stake in the business to employees and management through the Amsa employee empowerment share trust, ArcelorMittal announced. This, Amsa said, was on top of the Ikageng employee share ownership scheme that was approved at the end of last year. "Initially this allocation will result in 60.7 percent of trust units being allocated to black employees. In terms of the split, lower level employees will receive a higher proportion of trust units," the company said.

The deal forms part of an exchange reached with the South African government for imposing anti-dumping duties on cheap imports from China, which the steel maker claimed threatened the future of its business operations. The terms require Likamva Resources – which is a wholly black-owned company with black women holding a 58 percent ownership share – to introduce broad-based social and community development organisations within two years. Likamva founders include principal Noluthando Gosa, Jabu Moleketi, Leslie Maasdorp, Themba Hlengani, Tshepo Mahloele and Warren Wheatley.

"Amsa is committed to providing meaningful opportunities for historically disadvantaged persons to enter and benefit from the South African steel industry," the company said. In the long run, Amsa plans to "achieve long-term sustainable black ownership of more than 25 percent". Under the new R28m deal, black shareholders and employees will be locked in – unable to sell their shareholding for ten years.

South Africa (2): National Treasury abandoned its plans to tax the benefits received from an employee share plan or a broad-based black economic empowerment (BBBEE) trust set up by your employer as income, rather than as dividends or capital gains. The proposals had attracted much criticism for appearing to discourage broad-based employee share ownership. The Treasury released a revised draft Taxation Laws Amendment Bill, together with its feedback on comments on the initial proposal, confirming that the share-scheme proposal had been removed from the bill. In its place, however, was a measure to deal with what is known as "dividend stripping".

The initial draft bill had proposed an amendment to the Income Tax Act that would deem any distributions from shares acquired - as a result of employment - to be income, which would be taxed at between 18 and 41 percent, depending on marginal rate of tax. The proposal applied to restricted access shares too – actual awards being dependant (say) on being employed for five years. Currently, the dividends paid from these shares are taxed at 15 percent, and the capital gains made on the shares when employees get full ownership and sell them are taxed as capital gains, which depends on income tax rate, but has a maximum effective rate of 16.4 percent.

David Warneke, the head of tax technical at tax and audit firm BDO, described the initial proposal as draconian and said it would result in a punitive effective rate of tax that was neither fair nor conducive to the promotion of business in South Africa.

Dan Foster, a tax director at law firm **Webber Wentzel**, said the initial proposal ran "contrary to the stated policy of broad-based black economic empowerment, whereby many companies seek to increase economic participation of black employees through share schemes".

Treasury told Parliament's standing committee on finance recently that the initial proposal in the tax amendment bill raised numerous concerns among taxpayers and practitioners. It said commentators had pointed out that dividend flows were the reason BBBEE schemes are a viable incentive. Typically, participants in these schemes buy the shares on a loan that is repaid from the dividends earned by the shares. With dividends tax of 15 percent, 85 percent of the dividend remains to pay off the loan, but if the tax is higher, there will be less to go to the loans.

In addition, Treasury received comments about the proposal introducing complexity for employers deducting pay-as-you-go (PAYE) tax from employees and a proposed deduction for employers for the cost of establishing share incentive schemes introducing asymmetry and inequity in the tax system.

Among the amended provisions in the draft bill is one to prevent tax avoidance through dividend stripping, which occurs when companies buy back the shares and distribute the proceeds as dividends shortly before the restrictions on the shares fall away and the growth in the shares' value becomes taxable in the employees' hands. Employees end up paying less tax than they should. Treasury proposed that if, before the restriction is up, employees receive the capital invested in the shares back by way of a distribution from those shares, the award would be treated as taxable income.

Oz ProBono: Innovation-active companies are significantly more engaged in the digital economy, earning more than three times that of non-innovators. Innovation is encouraging a more connected and skilled economy, with greater market diversity and consumer choice. There are many Oz start-ups active in the field of social entrepreneurship, especially in the human services markets which are opening up in disability services and aged care provision. To encourage these developments, the **Australian** federal government's National Science and Innovation agenda provides a range of incentives. As part of this programme, in 2015, the federal government passed the tax and superannuation laws amendment (employee share schemes) bill to remove what were seen as taxation "handbrakes" on employee involvement in the ownership and financing of startups.

What is so important about this issue to justify this policy position? The answer can be seen in the report Employee Ownership Australia (EOA) released in 2014, called Employee Share Schemes – Their Importance to the Economy, which describes in detail the link between employee ownership and productivity, along with the impact that employee involvement in the ownership of businesses has on the performance of those businesses, both socially and economically.

Highlighting this link is the following data from the US National Centre for Employee Ownership. These impacts indicate the purpose and "social value" of employee ownership.

EO keeps businesses and jobs in local communities

Employee owned companies are 25 percent more likely to survive than comparable non-employee owned companies.

Employee-owners were four times less likely to be laid off during the recent recession than employees who did not own shares in the business which employed them.

Employee owned companies never close for reasons of moving to other countries.

EO improves business performance

Productivity improves by four percent to five percent on average in the year an employee share ownership plan (ESOP) is adopted, and the higher productivity level is maintained in subsequent years.

ESOPs increased sales, employment, and sales per employee by about 2.3 percent to 2.4 percent per year.

ESOP companies had on average an 8.8 percent higher sales per employee than their non-ESOP counterparts in the same industry and same size.

Private-company-based ESOPs had job growth of 60 percent between 2001 and 2011 while other companies remained flat.

EO builds community wealth

Employees at ESOP companies have additional retirement savings that are 2.2 times greater than at comparable, non-ESOP companies.

On average, employees at employee-owned companies receive 5 per cent to 12 percent more in wages.

This evidence shows that more widespread "stakeholder ownership" within social policy – rather than return on investment – will be the foundation for the following:

- increasing prosperity through distributing wealth more broadly
- rebalancing the economy through tackling the causes of poverty and inequality
- enhancing business accountability and social performance
- increasing community wellbeing
- creating more satisfying, productive and happier workplaces.

Employee share schemes (ESS) are an important part of the wider stakeholder ownership movement. Within start-ups, ESS enable employees to take up share options as part of their salary, with the latter component being income free, tax free to them if certain conditions are met. Employees choosing to swap current salary for a share in the future wealth of the company should know that it is not risk free, but does provide an incentive for those employees keen to be cut into the capital side of the business as "owners". For the start-up, a benefit is that pressure is also taken off the all-important cash flow of the start-up (through reduced monthly salary outgoings).

To implement the new ESS tax law, the Australian Tax Office (ATO) has produced a *how to* website, with all the required information/guidance on accessing the tax concession. For example, see ESS Basics and the startups template Standard Documents for the Start-Up Concession at www.ato.gov.au.

European Union: Centre chairman Malcolm Hurlston will be briefing European partners on developments with the Employee Ownership Trust in Brussels on November 9. The Centre is a member of ProEFP which carries out studies and actions, mainly for the Commission.

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