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it's our business

newspad of the Employee Share Ownership Centre

Will Budget Eso changes survive the General Election?

As General Election fever mounted in the UK, Centre members were left wondering how many of the Budget changes in the tax treatment of Eso and other incentive plans would survive the arrival of a new government.

Solicitor David Pett, of legal firm David Pett & Co., warned that though several significant changes concerning Eso and the use of employee trusts to avoid income tax and NICs under PAYE had been announced in the Budget last month, few details were yet available.

He said: "Details of only some of the proposed new changes have been released at this stage, with the most far reaching changes being said to be the subject of a review or consultation, but many of the proposed legislative changes could be held over until a second Finance Bill is published once the new government is in office. This does not mean that such provisions will not ultimately take effect when intended as most are understood to have the support of whatever Government is elected."

A hung parliament could delay some of the planned changes, which include:

Company Share Option Plans (CSOPs):

A scheme under which a listed company establishes an HMRC-approved CSOP in a subsidiary, with options being granted up to the £30,000 limit over shares in the subsidiary with rights entitling the holders to the benefit of all growth in value of the company accruing from the time of grant, has been blocked. The plan was legitimate under existing legislation, but few commentators believed that HMRC would let this one succeed as it effectively depreciated the initial value of the option shares (so as to maximize the value of options which could be granted within the £30,000 limit) and allowed disproportionate gains to be realized with the benefit of statutory relief from income. The loophole has been blocked, in relation to options granted on and after March 24 2010.

Share Incentive Plans (1):

A little-known provision first introduced in 2004, allows a company to claim a CT deduction for a contribution made to an HMRC-approved Share Incentive Plan and used to acquire at least ten percent of the issued share capital from individual shareholders, provided the shares are distributed within ten years (30 percent in five years). This has, in the eyes of HMRC, been abused by owner-managed companies seeking to extract funds and with the benefit of a CT deduction for cash taken out. A recent First Tier Tribunal judgement (in Grogan – now under appeal) illustrated how HMRC has attacked similar arrangements (under older legislation) using the anti-avoidance provisions in the Transactions in Securities rules. HMRC has sought to argue that a deduction is disallowed if the shares are considered to have been purchased at an overvalue – curiously the legislation does not require the shares to be purchased at not more than their market value for tax purposes. The new proposal seeks to block the arrangements by disallowing CT relief for the contribution to the SIP (used to buy shares off the company proprietor) if the arrangement has as a main purpose the obtaining of a CT deduction, or an increased deduction. The new rules will take effect regarding payments made after March 24.

SIPs (2):

From March 24, HMRC can withdraw approval of a SIP if there is an alteration made to the issued share capital of the plan company, or in the rights attaching to any shares in the company, and this materially affects the value of the plan shares (whether or not any such shares have been awarded under the plan). This seeks to stop artificial manipulation of share rights, which could enhance the value of plan shares.

HMRC announced a minor legislative change (announced in the pre-Budget Review) imposed by the EU to extend the Enterprise Management Incentives regime to overseas companies with a permanent establishment in the UK.

From the Chairman

We all know takeovers destroy billions of dollars (and sometimes pounds) of shareholder value; less well known is that the bigger the stake of the ceo, the greater the disaster. This was disclosed by LSE behavioural economist David de Meza at a meeting organised last month by the Parliamentary Office for Science and Technology to consider how cognitive and social factors can affect our fiscal behaviour. Aside from the hubris of chieftains ready to leap into their own shredders, there are lessons here for all reward mechanisms and I am delighted that David de Meza has agree to take part in a discussion with members. I shall write shortly with details of where and when.

Malcolm Hurlston

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Payments of bonuses through EBTs:

Mr Pett said: "At last "the Government will be taking action to prevent attempts to avoid tax and NICs through the use of employee benefit trusts and other arrangements to disguise payments of remuneration and intends to introduce anti-avoidance legislation to take effect from 6 April 2011" - Surely, a polite way of saying 'we know there's a problem, but as yet we have no idea how to tackle it'. This is backed up by the fact that this announcement is made only by the Treasury and is not supported by either a detailed HMRC Press Release or draft legislation. This could be another case of "closing the stable door" but for the fact that the Government has the power to legislate with retrospective effect to counter what they see as tax avoidance in this area."

"Geared-growth arrangements" (eg flowering shares and similar arrangements):

A review and consultation is to be conducted this year about such arrangements used in connection with employment-related securities "to ensure employment income is subject to correct tax and NICs*."* So far as we are aware, this is not intended to restrict the legitimate use of Joint Share Ownership Plans (JSOPs) as those which have been established by this firm are on the basis that the employee pays, or is taxed upon, the full initial unrestricted market value of the interest he acquires in the jointly-owned shares. Thereafter any gain realized on the disposal of the jointly-owned shares or of his interest in them, is properly taxed as capital gain. It is those schemes which have sought to push the boundaries and secure disproportionate growth in value, that are likely to be the subject of scrutiny.

CGT – Entrepreneurs' relief:

In relation to disposals on or after April 6 2010, the lifetime limit on gains qualifying for the reduced (effectively) ten percent rate of CGT under the rules relating to entrepreneurs' relief is doubled to £2m.

Release of loans to an employees' share trust (as a participator in a close company):

From 24th March, a deduction for CT purposes is denied (under the loan relationship rules) for the release of a loan to, for example, an employees' share trust. Such a release can already give rise to an income tax charge on the part of the person whose indebtedness is released or who benefits from such a release.

Anti-avoidance: transactions in securities:

Following an earlier consultation exercise the rules relating to the countering of tax advantages through transactions in securities are to be revised and their scope limited to transactions with a tax avoidance purpose. "That said, what in our opinion is required, but is not so far alluded to by the Government, is clear guidance from HMRC as to the circumstances in which a sale, to an employees' trust, of shares in a company for a consideration which is funded by loan from the company will be treated as being for "bona fide commercial reasons" so as to not to fall foul of these anti-avoidance rules," said Mr Pett

Disclosure of Tax avoidance Schemes ("DoTAS"):

Probably, the Government is going beyond the changes announced in the pre-Budget Review, and consulted upon earlier in the year, which will extend the obligations to disclose, up-front, schemes and arrangements which relate to the avoidance of employment income or have the effect of substituting capital gains for what would otherwise be employment income. A consultation response document, issued on Budget Day, states that HMRC will revise the regulations issued in draft last year as part of an iterative process. It appears that the scope of the proposed new hallmarks (of a disclosable arrangement) will be extended, but properly targeted. In particular, the employment scheme hallmark will be recast as a positive list of schemes to be disclosed. The changes – in regulations - are intended to take effect in the autumn. Penalties for non-compliance are to be increased by changes in legislation. As regards JSOPs, the Document notes that the consultation has "confirmed that the hallmarks do need to be extended to capture various types of avoidance scheme that are not currently being disclosed". The JSOP has, since 2002 (!) been fully disclosed to, and discussed with, HMRC and is presumably therefore not one of the types of arrangement now being targeted by these proposed changes.

Jersey May 14:

Book now for the Centre's next extended half-day share schemes conference for trustees on Friday May 14. The Centre and STEP Jersey (Society of Trust and Estate Practitioners) have put together a programme that will inform and update trustees and other employee share scheme practitioners on all the relevant recent legislative, regulatory, taxation and technical developments. Former Tory Front-Bencher and city star Howard Flight, who is a member of the Guernsey Financial Services Commission will deliver the keynote speech. Rosemary Marr, vice-president of STEP International and the Esop Institute's International Research Fellow, will update delegates on the latest offshore issues. This event is at the Royal Yacht (Hotel), St Helier. Other speakers are: Amanda Flint of BDO, Gary Hill of Collins Stewart Wealth Management; David Craddock of David Craddock Consultancy Services; Karen Cooper of Osborne Clarke; Kevin Lim of RBC CEES and William Franklin of David Pett & Co. Go to our website at: www. hurlstons.com/esop and click onto 'news' and 'events' to study the programme and speaker details. This extended half-day conference will allow delegates to learn and share knowledge about issues concerning the use of trusts in Eso plans. Centre members can attend for only £295; the non-members' delegate fee is £425. The admission fee includes a quality lunch in the Royal Yacht, served after the sessions end. To register please contact Dave Poole at: (0) 20 7239 4971 and: dpoole@hurlstons.com

Centre dinner in June

Dr. David de-Meza, Professor of Management Studies at the LSE, will speak on top pay and other finance issues at a Centre members' buffet/dinner in London in June. He will be the guest of centre chairman Malcolm Hurlston who heard him speak at an event organised by the Parliamentary Office for Science and Technology. Mr Hurlston was invited because of his contribution to the government's Foresight initiative. Prof de Meza propounds the hubris theory of ceo behaviour: the higher the ceo's commitment and potential reward, the more disastrous the takeover.....

New SAYE bonanza at Tesco

Employees at Tesco have reaped the rewards of saving in the company's SAYE share schemes. More than 55,000 members of staff, who saved between £5 and £50 a month for the past five and three years, are sharing a £144.4m payout with returns of 100 per cent and 44 per cent for each scheme respectively. More than 9,000 top savers who contributed the maximum £50 every month for the past five years, a total of £3,000 each, received more than £6,000. The strong return reflects the fact that, even in difficult market conditions, Tesco's share price remained resilient closing at £4.22* on 1st February when the two schemes matured. Staff take-up for the Tesco SAYE scheme across the UK and Republic of Ireland in 2009 reached 77,000 – 8,000 more than the previous year - all of whom either receive a pay out, or have the opportunity to retain their shares, when the schemes mature in 2013 and 2015. David Potts, Tesco's retail director, said; "Tesco's SAYE scheme has really delivered for thousands of employees this year. With reports suggesting that 2010 could be another year of stretched personal budgets for many people, today's returns will be a very welcome boost to income and are well deserved for the continued dedication and hard work of our colleagues." When each scheme matures, each employee receives a tax-free cash bonus and they are given the option to reinvest the total amount to buy Tesco shares at a discounted option price set when they joined the scheme. Employees then had the choice to sell their shares immediately or keep the shares to sell at a later date. Employees who joined the scheme five years ago bought shares at the 2004 option price of £2.32 each, while those who joined the scheme three years ago bought the shares at the 2006 price of £3.07. Teresa James, Tesco's group share schemes manager, said: "On maturity 60 per cent of our employees choose to exercise their options and retain the shares."

Employee-owned companies are the market's favourites

The UK Employee Ownership Index (EOI), published by law firm **Field Fisher Waterhouse LLP,** shows that although equities mostly delivered poor returns over the last decade, employee owned companies performed more strongly. They outperformed FTSE All-Share companies over the last decade with shares up 0.9 per cent on average, compared to the FTSE All-Share companies' share prices, which were down 9.9 per cent. The comparator share index level started at the peak of the dot-com boom ten years ago. Analysis of 2009 shows that employee owned companies under-performed in the final quarter, with shares down 1.1 per cent compared to FTSE All-Share company share prices which were up 4.8 per cent. Overall, however, they outperformed the FTSE All-Share over the year with shares up 54.4 per cent compared to 25 per cent, a trend that is also seen over the longer term. The EOI has beaten the FTSE All-Share in twelve of the last eighteen years with an average annual differential of 11.2 per cent. The EOI, compiled by the firm's equity incentives team, monitors the share price performance of listed companies, comparing the performance of FTSE All-Share companies with companies that are more than 10 ten per cent owned by employees. An investment of £100 in the EOI in 1992 would have been worth £685 at the end of December 2009, whilst the same investment in the FTSE All-Share Index would be worth £224.

On the Move

Centre member **Gannons** has joined the **Sharemark** Advisers' Network, itself a Centre member. Gannons Solicitors provides high quality advice for businesses delivered in a practical way, which impresses clients. Catherine Gannon, md, said, "Sharemark is a growing modern company with a great business idea which fills a gap in the market. Similarly, Gannons is a growing modern law firm which fills a gap in the market by providing quality advice at an affordable price."

Those who responded to the **Killik Employee Services (KES)** 2009 client satisfaction survey said they would recommend KES to someone else. 100 per cent of respondents said they feel as valued now as they did when they first appointed KES. The same clients said they would consider KES as an administrator, should they introduce a new share plan. Questions asked cover general account management and share plan administration, as well as more specific enquiries into how much contact clients would like, and to what extent KES meets their service level expectations. KES director, Peter Leach, said: "We are delighted with the survey results. Although there is still some room for improvement, it confirms that our clients value the service we provide." Overall, KES administration scored 85 per cent, and KES account management achieved 90 per cent.

Postlethwaite, the niche employee share plan specialists, announced the appointment of David Reuben, who has joined as share plans director from DLA Piper, where he was a partner. David has 15 years' experience of advising on all manner of incentives and management tax issues, including: design and implementation of employee share plans; and Corporate and personal tax issues arising on MBOs, flotations, mergers and acquisitions, reorganisations and employment terminations and tax efficient remuneration planning. David's clients include listed public companies, family companies and individuals. Robert Postlethwaite said: "We have always sought to be the lawyers of choice for anyone seeking responsive, practical and technically excellent share plan advice, at a transparent and reasonable cost. David will enable us extend our services to a wider range of businesses and advisers and create many new opportunities for us to add value for our current clients." Postlethwaite, which has clients across the UK, mainland Europe, was founded in 2003 by Robert Postlethwaite, formerly a partner in Pinsent Masons. For further information please go to www.postlethwaiteco.com or email Robert Postlethwaite rmp@postlethwaiteco.com

Kharafi National, part of the Kuwait based Kharafi Group and one of the region's largest employers, has enhanced its ground breaking employee benefits programme through an employee savings scheme designed by **RBC Corporate Employee & Executive Services** (RBC cees). It provides savings and pension benefits over and above local labour law requirements to approximately 4,000 qualifying employees in Kuwait, the UAE, Lebanon and Egypt. The plan enables employees to save for their future by gaining them access to international investment options while Kharafi National contributes at a matching level to support their employees. This milestone programme is one of the first to be provided by a major private sector employer in the region. RBC cees, part of RBC Wealth Management, a division of the Royal Bank of Canada, has been appointed as trustee, administrator and fund advisor for the scheme. Simon Stirzaker, senior manager at RBC cees in Dubai, said: "Kharafi's continuing commitment and investment in its human capital through such a program is admirable and is a milestone for employee benefits in the region." He added: "It shows that even in the throes of one of the worlds most severe recessions, companies in the region are continuing to invest in their people through innovative reward structures and take an active role in the care of their employees and their futures."

HMRC

From April 6 2010 the administrative work of Employee Shares & Securities Unit (ESSU) is being transferred from London to Nottingham. All enquiries and correspondence about employee share schemes should be sent to the new address from that date. The new address and contact details for ESSU administration office are: Charity Assets and Residence, Employee Shares & Securities Unit, Nottingham Team 1st Floor, Ferrers House, Castle Meadow Road ,Nottingham NG2 1BB Telephone: 0115 974 1250 E-mail: Shareschemes

Although notices to file annual returns for 2009-10 (to be issued shortly) will have the 100 Parliament Street ESSU address, please can you send your returns to the new Nottingham address shown above. The facility to file returns online will be suspended from April 1 2010, as part of an overhaul of HM Revenue & Customs IT infrastructure. This means the annual share scheme returns can only be submitted in paper format using the prescribed form, and will not be accepted on compact discs, other electronic media or any other format.

Eso into ISA grows

In one of this Government's rare tax giveaways for savers, the limits on tax-free Individual Savings Accounts (ISAs) goes up dramatically from £7,200 to £10,200 on April 6, with the cash ISA limit rising from £3,600 to £5,100. This opens the door to increased allocations of employee shares from matured schemes into ISAs with no CGT liability. 1.8m people save in SAYE plans across the UK. Scheme rules allow for them to save between £5 and £250 per month in an SAYE and, according to Yorkshire Building Society, which administers most of the schemes, employees currently save an average of £83 per month into the plans. According to banking surveys, the changes have not been well understood, and over-50s in particular, whose limit went up early last October, are particularly hazy about their cash ISA allowance. Three-quarters do not know what it is, one-third believe they can save only £3600 and one-quarter think it is £1800, according to Co-operative Financial Services. SAYE savings account interest rates (fixed by the government) for three, five or seven year contracts – are currently 0.54 per cent, 1.42 per cent and 1.84 per cent. But that disguises the fact that SAYE money is taken from pre-tax salary.

CONFERENCE

Cannes July 8 & 9:

The Centre's 22nd annual conference has attracted an impressive array of speaker talent: including for the first time **Mick McAteer**, who is an adviser to CESR (Committee of European Securities Regulators) in addition to being on the board of the Financial Services Authority. It will be a great chance to air issues with the Prospectus Directive not least. Other star speakers include Patrick Neave from the Association of British Insurers; Sarah Pickering - Alvarez & Marsal Taxand; Amanada Flint – BDO Human Capital with Jon Hather of Barchester Healthcare Homes, Justin Cooper - Capita Registrars; Dave Coleman – Equiniti; Mark Gearing and Pierre-Philippe Hendrickx - London/Brussels offices of Field Fisher Waterhouse LLP; Quentin Digby – Freehills (Australia); Leslie Moss - Hewitt Associates; Peter Leach - Killik Employee Services and Joe Saburn - Squire Sanders & Dempsey (US). Delegates from plan issuer companies are starting to register. Vacancies remain for additional speaker slots, so contact Fred Hackworth (fhackworth@hurlstons.com) as soon as possible if you wish to speak and thereby obtain the hefty reduction in attendance price. In addition this year, we will have presentations on aspects of wealth management. As this event takes place on **Thursday and Friday, July 8 & 9,** the package deal accommodation nights in the five star conference hotel, the Majestic, on the Cannes seafront, are July 7 & 8. Go to our website at: www.hurlstons.com/esop and click onto ‘events’ for more details. The conference brochure is co-sponsored by **Appleby Global** and by the **Sanne Group**. Other elements can be co-sponsored too: such as the cocktail party, or one of the conference lunches, or even the entire event. Please contact Fred for further information.

Early bonus payments to beat tax rise

Highly paid managers at groups including Tesco, SABMiller and Land Securities expect to receive their bonuses earlier than usual this year, and to be taxed at 40 per cent, rather than the new 50 per cent higher rate, which was announced for salaries of more than £150,000 during last year's budgetary changes. Bonuses are usually paid in April or May. Groups such as Marks & Spencer, Whitbread and J Sainsbury are working around the clock to get their annual reports signed off so that bonuses can be paid. While the tax increase affects only those earning in excess of £150,000, thousands of people earning below the new threshold are expected to receive an early windfall. At Tesco, 1,700 staff are expected to be paid. The supermarket giant's ceo Sir Terry Leahy will make a considerable saving on the £1.2m cash bonus he has been awarded for 2009. Although Dairy Crest employs only a handful of people that earn more than the £150,000 threshold, the company is bringing forward bonus payouts for about 550 staff. The LSE has given its employees the option of being paid before or after the deadline, so that they can judge the effect of the payments on their own tax arrangements. **Marks & Spencer** and **J Sainsbury** are two of the companies that have accelerated bonus payments for staff, allowing the highest earners to escape the new Income Tax band. M & S is paying out cash bonuses to all 78,000 staff in the first days of this month, instead of the usual date in July. Around 600 senior staff will be taxed on the cash at 40 per cent instead of 50 per cent. At Sainsbury, the 1,200 highest earners will have their bonus payments brought forward by three months, but claimed the award was a trial to bring bonus payments closer to the time when they were earned. The new tax rate applies on all personal income above £150,000 from April 6.

Centre member **The RM2 Partnership**, which specialises in setting up employee share ownership and share option plans, is reporting significant interest in take-up – possibly prompted by the new 50 per cent tax rate – but also as companies look for new ways of tying down staff in a way that is tax-efficient for both sides. "If you have rainmakers in the company, people that drive the company, they really should be locked in with equity-based rewards because their aspirations are then aligned to those of the shareholders, and they will be receiving that slice of reward in a capital gains tax environment," said RM2 director Geoffrey Bond.

IFRS 2 rethink

IFRIC the interpretations committee of the International Accounting Standards Board (IASB) at its recent meeting (March 4) will have disappointed those who were hoping that it was going to issue new guidance on the treatment of service and performance conditions. IFRIC clearly recognises there are problems with IFRS 2 but were reluctant to examine the Standard in detail for fear of where this might lead. The committee’s solution was to go away and try to prepare new guidance based on how the same issues are addressed in US GAAP. For more information contact William Franklin at **David Pett & Co.**

COMPANIES

The FTSE 100 Cardiff-based insurance group **Admiral** posted an 18 per cent rise in turnover on 2008 to £1.07bn for the financial year to the end of December, 2009. The company, which operates in both mainland Europe and the US, reported its best pre-tax profit, up 7 per cent to £215.8m. Some 3,000 employee-shareholding staff will share in a £9m share windfall bonus. In its first year of trading in 1993 Admiral generated revenues of just £18m, which it is now generating every week. The company is the third biggest car insurer in the UK market behind the Royal Bank of Scotland and Aviva, with a seven per cent share of the UK market.

Cable & Wireless faces a shareholder revolt over plans to pay senior executive John Pluthero up to £11m under a controversial incentive scheme that has already drawn fire from corporate governance bodies. The company is braced for protests against golden handcuff proposals that would lock in senior managers at one of the companies that is being demerged and separately floated on the stock exchange. Under the terms of the scheme, three executives would be in line for millions of pounds if targets are met. Pluthero has already received £8m under the cash part of the company's long-term incentive plan, but stands to collect another £3m by 2011 if he can boost the group's share price. The company has recently cut 1,900 jobs. Investors say they are ready to vote against the firm's remuneration report at the annual meeting this summer because pay awards at C&W are excessive. One shareholder said: "C&W shouldn't be inflaming tensions at a time of heightened investor sensitivity to excessive pay in the wake of the world financial crisis. Executive remuneration has become an explosive issue." But the company said: "We pay our executives what we consider to be a reasonable rate, in line with their duties and comparable packages at peer companies." C&W has increased shareholder returns by 44 per cent since 2006. Richard Lapthorne, group chairman, said that shareholders had benefited from the scheme, which had underpinned the company's revival. Shares are up 30 per cent in three years.

Cameco, one of the world's largest uranium producers, which helps to fuel nuclear power plants around the world, is typical of US companies which boldly advertise their all-employee share ownership plans as a big plus in their staff recruitment literature.

Centre member **Collins Stewart** has won its battle to be excluded from the bank bonus tax. HMRC published a clarification that ensures that no UK stockbroker will be caught by the tax, which has already raised around £2.5bn from the major banks. Firms which are not deposit takers and whose capital resources requirement is less than £100m will be excluded.

Senior management at **Eircom** are working on a comprehensive new business plan for the company which could see a further 1,500 voluntary redundancies being sought. The plan, spearheaded by ceo Paul Donovan, is being prepared for Eircom's shareholders and is likely to be finalised by the end of this month. It envisages further staff job cuts of about 1,500 staff, including a possible 25 per cent reduction in managers. The plan will include estimates of how much the company will need in order to make investments in its network, and how it can reduce its interest bill by managing its debt of almost €4bn. The plan will form the basis on which Eircom's new majority shareholder, Singapore Technologies Telemedia (STT), will decide how much funding to invest in the business. Any new investment could trigger a problem for the ESOT, which owns 35 per cent of Eircom. It will need to put in its pro-rata share of any STT investment or risk having its stake in the company diluted. The Esot would normally be preparing to make a May distribution to its members, but a requirement for funding could halt this year's payment. Eircom management hired consultancy firm Booz Allen to assist in its review of the company's operations.

Equity Insurance Group has introduced a share incentive plan (Sip), which opened to all its 1,100 UK employees on March 5. This is the first employee share scheme launched by the company since it was bought by Insurance Australia Group in January 2007. The new scheme, provided by share plan administrator Equiniti, allows staff to contribute between £10 and £150 each month or as a lump sum payment of up to £1,500 within the tax year. Staff contributions, which are taken from pre-tax salaries, allow them to buy partnership shares, while parent company Insurance Australia Group UK (IAG UK) will provide free matching shares. Ricky D'Ash, global rewards consultant at Equity Insurance Group, said: "The IAG UK share incentive plan forms part of IAG UK's overall remuneration offering and is designed to provide eligible employees with an opportunity to buy IAG shares in a tax-effective manner and benefits from a potentially tax-free gift of IAG shares.

One third of the investment banking staff at **Evolution Group** will participate in an employee share plan requiring share option purchases of up to £20,000 each with a lock-in period of three years.

General Medical Clinics plc has established an employee share option trust. The Group loaned the trust £97,962 in the year ended May 31 2008 and a further £150,000 in October 2008 to purchase shares in the company. The trust purchased 261,000 shares at an average price of 37p per share during the year ended 31 May 2008 and in October 2008 purchased 530,000 shares, costing £149,884, an average price of 28p. At 30 November 2009, the trust held 791,000 shares with a market value of £225,435.

Staff **at John Lewis** will share a £151m bonus after the retail group saw annual pre-tax profits rise ten per cent to £306m. The owner of the Waitrose supermarket chain said the bonus amounted to about eight weeks' salary for each employee. John Lewis chairman Charlie Mayfield said the company emerged from recession in a stronger competitive position, but he warned that 2010 would be tough. John Lewis said gross sales rose 6.5 per cent to £7.4bn as it continued to take market share from rivals. The company's 70,000 'partners' will share a bonus pot equivalent to about 15 per cent of their salary. "Today's results reflect the collective hard work of our partners," Mr Mayfield said. John Lewis's co-ownership model, "while not a universal panacea, clearly underpins the partnership's performance", he said.

Shell came under fire over excessive executive pay again after the Anglo-Dutch oil group admitted it more than doubled the pension pot of former executive Linda Cook to almost $25m (£16.5m) last year. Cook, the former head of Shell's gas and power business, left last year after being passed over for the ceo role. Shell boosted her pension pot by $13.4m after in effect awarding her 15 years of extra contributions. The company said in its annual report some of these pension arrangements have now been scrapped. Errol Keyner from VEB, the Dutch shareholders association, told the Guardian: "The people who came up with this must have been smoking something which is not allowed in law. It's beyond belief." Cook also received a $7.6m "golden goodbye," earning $9m in total last year.

China's banking regulator issued guidelines linking bonus pay of bank executives and employees to performance, according to state media. The guideline would require at least 40 per cent of executive bonuses to be deferred for at least three years, the Xinhua news agency reported. Banks could then hold back money from the retained bonuses if executives perform poorly. The criteria for bonuses would be based on a range of factors, such as a bank's business performance, social responsibility and risk

management, which includes bad loans.
The guidelines would also limit an executive's bonus to no more than three times their annual base salary. For rank-and-file employees, bonuses could not exceed 35 per cent of base pay.

Bonus corner

Bonuses made up of so-called toxic debt and given to bankers at **Credit Suisse** as a punishment for poor investments, have soared in value. Their bonus pool, made up financial products originally thought to be worthless, is now worth $5bn. The bank lost $7bn last year, in part due to the investment decisions of some of its best-paid staff. The toxic debt bonuses had been described as a way of giving the bankers to taste of their own medicine. But it has now emerged the value of the toxic bonus pool has climbed by 72 per cent - far outperforming many safer investments. The money had been put into complicated financial products linked to the risky commercial debt secured on among other things, a Japanese shopping centre, an American supermarket chain and other commercial property that had plunged in value. At the height of the financial crisis, many people thought these investments were worthless. To Credit Suisse, it seemed right to share them out as annual bonuses among the people who had apparently got things so wrong. But as confidence has returned to the market - it has become clear that the toxic asset pool wasn't nearly as toxic it had been thought. The toxic bonus fund has soared in value by 72 per cent That compares to a 60 per cent rise in the value of Credit Suisse shares over the same period - or a mere 19 per cent rise in the main US share index the Dow Jones.

Lloyds Banking Group revealed a loss of £6.3bn for last year as its bad debts swelled to £24bn after the lender was forced to write down the value of poor investments made by HBOS. Despite the loss, which compares with a £6.7bn loss in 2008, the bank, which is 41 per cent owned by the British taxpayer, is expected to pay out about £200m in bonuses to its staff. A spokeswoman confirmed that the Lloyds bonus pool would be a very small percentage of its total revenue for 2009, which was £24.6bn

Royal Bank of Scotland unveiled a new tougher reward scheme for senior executives built around a range of performance measures, as the state-backed bank moved to introduce a more balanced pay structure. EDITOR'S CHOICE

The new incentive plan published in RBS's annual report could pay as much as £4.9m to Stephen Hester, ceo. It is linked to a measure of the bank's profits as well as its share price, and is therefore more sophisticated than the two previous pay schemes, which were based purely on the shares hitting a certain level. The new scheme also scales back the maximum share award under the long-term incentives for senior executives from 450 to 400 per cent of salary It was developed after extensive discussions with UK Financial Investments, the body responsible for managing the government's stakes in banks, and other shareholders. UKFI was previously supportive of a pay scheme that focused solely on RBS's share price performance as this was aligned with the government's interest in selling its 70 per cent stake in the bank at a profit. While the share price performance is still relevant, UKFI has been keen for the bank to introduce a broader set of performance criteria. Under the new scheme's terms, half the award will be linked to the bank's economic profit – which factors in its cost of capital – achieved in 2012. Another 25 per cent will be based on the total shareholder return, a measure of the share performance relative to RBS's peers, with the maximum for top quartile performance. The final quarter will reflect the pure share price performance. Executives will gain a full entitlement if the shares hit 75p, fractionally higher than the 70p target of the old scheme. RBS shares are trading at 42p. The annual report showed that Mr Hester's base salary was £1.22m in 2009. He waived his bonus amid a public backlash against excessive bankers' pay. RBS announced losses for 2009 of £3.6bn, after struggling with £bns of bad loans. Despite the losses, the bank will pay bonuses totalling £1.3bn to its staff. But Mr Hester said it had lost money by not paying big bonuses to retain productive staff. The UK taxpayer owns 84 per cent of RBS after the government bailed out the bank at the end of 2008. Ceo Mr Hester told BBC Radio 4: "We've had a small experiment in this respect... some of our best-performing people have been leaving in their thousands. The people who left us last year, I believe, would have increased our profits by up to £1bn beyond the ones that we've got." Mr Hester decided not to take his own bonus, which would have been £1.6m.

Michael Geoghegan, ceo of **HSBC,** turned down the chance to become Britain's best-paid bank boss by handing a multi-million-pound bonus to charity. He is in line for a payout of close to £4m after HSBC's strong performance. Rather than give up the bonus, Geoghegan plans to pass it on to children's charities. Five bankers at HSBC shared a bonus bonanza of more than £38m last year, even as the bank tried to demonstrate it was heeding public concern about City pay through a decision by its ceo Michael Geoghegan to hand his £4m bonus to charity. As the bank reported a 24 per cent fall in pre-tax profit for 2009 to £4.63bn, the bank's annual report showed that the company had intended to hand the chief executive a pay rise "in light of the international competition position and the increased responsibilities". He refused the rise in his £1m salary. The bank outlines the five highest paid employees in its annual report to comply with Hong Kong regulations but does not need to name them. The highest paid individual received £10m, the next two more than £9m each, with a payment of £5.7m to the fourth highest paid with the fifth receiving £4.3m The rest of the HSBC executive team is expected to share a bonus pool of up to £15m. Flint is thought to be due for a payout of about £2.5m. Stuart Gulliver, the head of HSBC's investment banking arm, is estimated to be in line for a bonus worth more than £3m. A few other top HSBC bankers below board level are expected to get multi-million pound windfalls. All the bonuses are expected to be paid in shares and deferred over several years.

Eric Daniels, ceo of **Lloyds Banking Group**, was offered a £2.25m bonus by his board — but turned it down. **Northern Rock's** boss defended the decision to pay staff almost £15m in bonuses despite the state-owned bank's loss of more than £250m last year. Gary Hoffman said that he was "very, very sensitive indeed" to public outrage over bailed-out banks paying bonuses to employees. However, the ceo said that the Newcastle-based bank had reduced its losses by £500m more than expected and that staff deserved to be rewarded. Mr Hoffman, who has waived his own £700,000 bonus, which will go back into the Government's coffers, said: "We've beaten the target and it's right that nearly all of that goes back to the taxpayer. But I think it's also right that a very small percentage of that goes to the people who delivered." Unveiling a dramatic reduction in losses from £1.36bn in 2008 to £257m last year, Northern Rock said that it would pay out £14.9m in bonuses. Of that sum, 32 senior managers will share about £3m, with the bank paying £1.5m to the Treasury to cover its one-off bonus tax.

Andrew Witty took home more than £8m in pay and share awards last year. Mr Witty's first full year as ceo of **GlaxoSmithKline** was marked by a 76 per cent pay rise to £3.1m, plus £5m worth of shares in GSK — a package that could revive the controversy surrounding the pay of JP Garnier, his predecessor. Mr Garnier was paid US $5.9m last year, despite leaving the company in May 2008, because of a share option plan dating from the time that Glaxo Wellcome merged with SmithKlineBeecham. In 2003, shareholders protested against a golden parachute deal that would have given Mr Garnier $18m if he had been dismissed. GSK was forced to revoke the package after the shareholder dissent. To avoid being placed in a similar position, Mr Witty has said that he would forego his annual bonus if he was sacked from the company. One big institutional investor said that the group had met dozens of shareholders, in some cases several times, before settling Mr Witty's package. "They devoted a lot of time to consulting with shareholders. I don't think this is going to cause major concerns," he said, adding: "The problem with this industry is that it has always been very highly paid. Garnier was lavish. But we do value Andrew Witty's endeavours as a new-broom chief executive. I think he has shareholders' support." GSK introduced a new executive pay policy, which involves rewarding top earners through a performance share plan rather than just share options. The plan is based on total shareholder return and cash flow.

Bonus payments to **Scottish** civil servants have doubled since 2006. New statistics showed they are on course to be handed £2.6m in bonuses this year, but several MPs said that the bonuses were inappropriate and should be axed at a time when public services were facing Budget cuts.

Yorkshire Building Society has completed the takeover of Chelsea Building Society, creating a mutual with £36bn of assets and 2.8m members. The merged company, which will boast 178 branches and will be the UK's second largest building society behind Nationwide, now aims to provide consumers with a secure and credible alternative to the high street banks.

Guy Abbiss of **Addiss Cadres** reports that the European Union's Council of Ministers is still making heavy weather of proposed changes to the Prospectus Directive which would impact on the employee equity industry on the continental mainland. Regular newspad readers will know that currently all non-listed companies and many foreign-owned multinationals have issued a prospectus because their shares are not listed on an approved EU based stock exchange. Guy reminds us that having first pushed aside the European Commission's proposal to exempt all companies - both listed and private, who make equity awards to European based employees - from the requirement to issue a prospectus in advance, the Council has made four attempts (to date) at trying to find a solution. Its most recent proposal would except AIM-listed companies from the PD requirement when employee share schemes are being introduced or extended within EU jurisdictions. Most other private companies, however, would *still* be forced to issue a prospectus. Guy says that the interminable changes in the text and consequent delays sit very badly indeed alongside the Council of Minister's previous agreement that legislative obligations on companies should be reduced so that their administrative tasks can be cut by 25 percent by 2012. This will be a major topic at Cannes this year.

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