Vol 26 No 3 April 2013

it's our business

newspad of the Employee Share Ownership Centre

Peers throw out Chancellor's "Shares for rights" contracts

The House of Lords delivered a hammer blow to Chancellor George Osborne's controversial 'Shares for Rights' scheme by voting it down. By a solid majority of 232 votes to 178, their Lordships voted to remove it from the Government's Growth & Infrastructure Bill.

The vote, which came almost immediately after Mr Osborne's Budget statement (see below), could take many months to unpick.

Technically, the proposed 'Employee Shareholder' contracts no longer exist - after the excision of the enabling clause from the parliamentary Bill - so it will be up to the Chancellor to find parliamentary time in which to resurrect the scheme. The proposal will now go back to the House of Commons where the Government will decide whether and when to reintroduce it.

While the Conservatives may still be able to push the clause through, lack of support from Lib Dem colleagues who may not have been fully informed in the first place may make this difficult and ultimately significantly delay the proposed introduction. Tactically Mr Osborne has to decide whether to simply re-present the same clause as before, or whether to soften its edges, in order to try and win over waiverers before the next vote. Constitutionally, the House of Lords can delay government legislation for up to one year.

The peers said the clause in the Bill would have permitted employers to bribe their employees with shares worth as little as £2,000 to sign away many of their legal employment rights, from redundancy pay and unfair dismissal rights to the right to request training and flexible working. They said the clause would have a "damaging effect" on employment relationships and on industrial harmony and that the scheme would arm bad employers with a new power which might be used to coerce their employees.

Independent peer and barrister Lord Pannick, who fought to stop the scheme going ahead, said in the Chamber: "I am sure it was not in the minister's bathtub that this foolish idea was dreamt up. I am very sorry the Government has not listened in particular to the noble Lords King of Bridgwater, Forsyth of Drumlean and Lord Vinson and to the noble Baroness, Lady Wheatcroft. Between them they have years of experience as employment ministers and in business."

The introduction of the new 'employee shareholder' contracts had already been postponed from this month until "Autumn," this year, according to the Budget statement small print. Now the delay could prove much longer.

It was during the Tory Party annual conference last October that Mr Osborne first announced his 'Shares for Rights' deal, whereby employees would forfeit certain employment terms in exchange for a stake in their company. As part of the scheme, employees would not pay Income Tax or National Insurance Contributions on the first £2,000 of shares received and would not pay Capital Gains Tax (CGT) on the first £50,000 worth of shares.

In exchange, the employee could be asked to give up rights, including those concerning unfair dismissal, redundancy and other statutory rights – eg to request flexible working.

From the Chairman

Our online qualification - the Certificate in Employee Ownership Studies – is technically advanced, vastly convenient and refreshed in content (Coalition and Nuttall Review) thanks to David Craddock, Clifford Chance (for peer review), our registrar and our chief examiner. It should inherit from our Diploma Jersey FSA approval and its development has been watched supportively by leading officials. First modules will be open to students, already signing up in record numbers, on April 1. There is still time to catch the first bus – go now to www.esopinstitute.com

Malcolm Hurlston CBE

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

The Government said it was legislating to introduce a new employee shareholder status that would give staff a stake in their businesses' future success and give owners greater choice about the contracts they could offer to individuals. However, Mr Osborne's scheme soon came under withering fire. Various professional bodies condemned it, including the Law Society and the Chartered Institute of Professional Development. Commentator Neil Collins wrote in the Financial Times: "To call this proposal half baked is an insult to bakers."

While initially mildly supportive – on the grounds that at least the Chancellor was focusing on Eso - the Centre's enthusiasm for Employee Shareholder contracts was moderated by fear that the 'Shares for Rights' idea in the new scheme could tarnish public and trade union perception of employee share ownership as a whole.

Centre chairman Malcolm Hurlston CBE said: This was a bathtub special pandering to the extreme small business lobby. Its sensitivity demanded the careful thought and presentation which was notably absent."

Amanda Flint, partner in the employer solutions team at Centre member **Grant Thornton** commented: "While we are great supporters and indeed proponents of wider share ownership, the employment rights for shares initiative is misguided. Many employers seem uncomfortable with offering shares on these terms.

"The vast majority of small employers are likely to find the proposed arrangements difficult and costly to implement. It would be better to give a flexible income tax relief to employee share ownership in all contexts – so up to £2,000 income tax and national insurance free shares for all without the associated employee rights restrictions."

Matthew Findley, partner at law firm and Centre member **Pinsent Masons**, added: "The vote is perhaps not surprising, even if the timing is a little unfortunate for the Government. It would appear, however, that the Government is brushing off the loss, saying that the measure will be implemented by the House of Commons in any event. What will be interesting is whether the Opposition, or the more rebellious elements of the coalition, mount a serious challenge to the legislation given that it is widely known to be a personal project of the Chancellor.

"The arrangement is likely to result in a number of unintended consequences," he said. "While some companies have examined it with a view to use it on an all-employee basis, the arrangement may present management within privately-owned companies with a potentially very tax-efficient way to receive shares in their employer. It could create a tax break for senior managers at a time when scrutiny of what is and what is not legitimate tax planning is at its peak," he warned.

The Budget produced a forest of technical changes for both employee ownership and employee share ownership. Taken together, the Budget announcements would look very attractive to some privately held and unquoted companies which had not so far installed Eso schemes, said David Pett, partner at Centre member law firm **Pett, Franklin.** They should look again at the benefits offered by HMRC approved share schemes and especially at EMI, if they were eligible to use it, said Mr Pett.

Among the 'goodies' displayed on the Chancellor's stall were:

*The Government is providing £50m annually from the next financial year 2014-15 in order to incentivise growth of the Eso sector. This will be used to respond to recommendations from the Nuttall Review *and other relevant organisations* that aim to encourage employee ownership.

*In addition, this money will be used to fund the introduction of a CGT relief on the sale of a controlling interest in a business into an employee ownership structure.

*Confirmation that the Government would approve a package of simplification measures in response to the Office of Tax Simplification's review of tax-advantaged share schemes. These include:

- Seven year savings related SAYE Share Option contracts to end
- Harmonisation of rules on retirement for Share Incentive Plan (SIP), SAYE and the Company Share Option Plan (CSOP)
- Removal of the five percent material interest rule – to qualify for Entrepreneurs Relief from CGT - on the exercise of EMI options
- Removal of prohibition of use of certain restricted shares
- Removal of penalties for early withdrawal of SIP shares and SAYE options after cash takeovers of participating companies
- Removal of limits on SIP dividend re-investment
- In 2014 self-certification of SIP, SAYE and CSOP

"We were heartened by his statement: '*Employee ownership helps create an enterprise culture,'* said Beverley Johnson of Centre member **YBS Share Plans**

Other areas of Eso interest were:

*The abolition of stamp duty on shares traded on growth markets, such as AIM.

*The Government said it supported employee ownership as a business model and welcomed the work by the implementation group to take forward the recommendations of the Nuttall Review.

*Corporation Tax (CT) deductions for employee share acquisitions – this measure, effective from Budget Day, amends existing legislation to clarify a company's entitlement to a CT deduction. In some cases, companies have claimed a UK corporation tax deduction for the accounting charges booked under

IFRS2/FRS20 regarding share options/awards that have lapsed, said Centre member **Deloitte.** The government published draft legislation precluding deductions in respect of such accounting charges. The government said that this was not a change in the law, but rather a clarification of the existing legislation - its view has always been that such deductions are not available in respect of these accounting charges. As such, HMRC said that it would continue to resist claims of this type. “It would appear that claiming deductions for the accounting charges booked in respect of lapsed share awards will not be possible going forward,” said Deloitte.

However, more controversially, Mr Osborne announced that the consultation on the new CGT relief for the sale of a controlling interest in a business into an employee ownership structure, would take into account the progress of work by the Department for Business, Innovation and Skills (BIS) and the implementation group to develop an ‘*off the shelf*’ employee owned company model. The Government would look at further incentives in this area, including measures targeted at employees through indirect ownership models, he added.

The Centre questions whether an alternative employee shareholding vehicle is necessary, as employee benefit trusts have served the Eso movement well over many decades. It is time the Chancellor took a British Isles perspective which would be safer for HMRC too.

Once again, the biggest Eso omission from the Budget, despite the Centre’s call for action, was a much-needed rise in the employee investment limits in approved employee share schemes, as the £250 per month individual limit has remained unchanged for more than 20 years.

Clegg proposes tax bonuses for Eso company staff

Deputy Prime Minister Nick Clegg has proposed tax breaks on bonuses handed out to staff in employee-owned firms.

In a speech at the Law Society, the deputy prime minister outlined plans to consult this summer on “A relief on tax on bonuses paid through benefit trusts, where a significant chunk of the business is owned by employees”.

To qualify it would be it would be necessary for the rewards to go to staff throughout the company and not just those at the top.

It is the first time that Clegg went so far as to promise a specific consultation on the issue. He said: “Employee ownership works because it so neatly aligns incentives and puts the workers at the heart of the business.”

His benchmark for the term ‘significant chunk’ may well be the ten percent employee ownership barometer used by the EOA in its quarterly statistics. Mr Clegg voiced his tax break plan while delivering the inaugural Robert Oakeshott memorial lecture at the Law Society’s London HQ. The Deputy PM said: “As the champion of employee ownership, Robert lived by his principles; principles of justice, fairness and participation. An extraordinary and colourful character, everyone who knew him seemed to be struck by his irrepressible and infectious energy. Robert was as at much at ease dining in high society as he was heading to the local greasy spoon with workers up in the North East, where he founded Sunderlandia - a construction co-operative - in 1973. Sunderlandia broke from tradition by employing women in skilled trades and as young apprentices - and in doing so he inspired the start of a new wave of co-operatives. He went on to found Job Ownership Limited in 1979, now the Employee Ownership Association, which has been witness to changes in Government and the economy alike.

“Last year, I asked **Graeme Nuttall** to conduct a review into employee ownership. He has worked tirelessly on this agenda and I am grateful to him and my ministerial colleague Norman Lamb for driving it forward. Norman has now passed ministerial responsibility to Jo Swinson – and the job of delivering Graeme’s recommendations is not a small one, but I know that Jo is working flat out to deliver them.

“One of Graeme’s recommendations was to simplify the information available on employee ownership. That is why we have progressed the idea of Employee Ownership in a Box - a package of legal, tax and regulatory information on how to become employee owned. Templates that owners can fill in and use as a basis for their business. I would like to thank **David Pett**, of Pett, Franklin and Co., for his work on the articles. And I am pleased that these are nearing completion. In the coming weeks, we will publish these in draft, so that experts and advisers in the field can comment and refine them before the launch.

“I would like to welcome progress on the **Institute for Mutual and Employee Ownership**, and am pleased that the members have come together and agreed the broad scope and model. I would like to thank KPMG for the work they have carried out pro-bono on the commercial viability of the proposed Institute. The Institute will be established with a broad cross sector reach, representing and promoting employee, mutual and co-operative ownership. Its objectives will be to provide focus, raise awareness and support the growth of this unique and important sector of the economy. Initial priority will be given to its role in helping to implement the recommendations of the Nuttall Review.

“Once established, the Institute will build on a base of research, collect data and provide a range of standardised organisational models - including the proposed ‘employee ownership in a box.’ It will seek to offer licensing of higher education and training courses and accreditation of individuals – a one stop shop for companies and their advisers who are either considering or have already made the transition to mutual, co-operative or employee ownership.

"I can confirm that we will be publishing a consultation that will assess the impact of a range of options to make sure the right people benefit from any tax changes. For example, one option that has been suggested would reduce tax on bonuses paid through benefit trusts, where a significant chunk of the business is owned by employees. Where all employees, not just those at the top, stand to benefit. This consultation will be launched in the summer and I very much encourage you to be involved, so by this time next year we have the right measures in place for employee ownership to flourish."

Mr Clegg's ideas go beyond the budget commitment to provide £50m capital gains tax relief from next year for a majority shareholder to sell his company to his employees.

Justifying that plan, Clegg said: "Many owners end up selling to the investor who has the largest chequebook, but little regard for the traditions, employees and customers of the firm.

"Others hand the business down to their children even if that isn't what they or their children really want. What we want to encourage is for more owners to sell the business on to those people who know the business inside out, who will go the extra mile, the wider family who have worked to build it up and contribute to its success – in other words, the employees."

In the past year there has been a ten percent growth in the number of employee-owned firms, he said.

In common with the Tories Francis Maude and Oliver Letwin, Clegg is pushing for a diverse model of companies in the UK, including mutuals in the public sector. He said: "A diversity of business models in an economy is important because it ensures that not all firms are structured to take short-sighted, gung-ho risks on behalf of others.

"Crucially, employee ownership can drive employee engagement by aligning the incentives of ordinary workers and the business. In practical terms, it means lower absenteeism and lower levels of staff turnover. Across public service mutuals we have seen organisations who have decreased their absenteeism by an average 20 percent since spin-out. Many companies spend thousands of pounds to come up with quirky ideas to motivate their staff, yet fundamentally it is the structure of their company which fails to align incentives.

"The Cass Business School concluded in 2010 that employee-owned businesses are between nine and 19 percent more productive than traditionally structured companies. So not only does employee ownership help build a more motivated, more committed workforce, but it improves the bottom line too," he added.

Mr Pett told *newspad:* "The model documentation, which includes a trust deed for an employees' trust, guidance notes and articles of association for both the employee-owned company and a trustee company, is intended to make it easier for companies and their advisers to recognise the benefits of an employee-owned structure and to take the steps necessary to adopt it.

"It is one part of a package of help and support for the employee-ownership model which BIS is putting together. In addition, the Chancellor has announced a number of proposals for changes to the tax rules which, if implemented in full, would make such an ownership structure a highly tax-efficient alternative to the more conventional solution of a trade sale of the business."

Mr Pett, a partner in the firm, is author and joint editor of 'Employee Share Schemes'. As well as having been a member of the government-appointed working party which put together the tax regime for Enterprise Management Incentive share options and Share Incentive Plans, he recently contributed to the work of the Office of Tax Simplification in the formulation of its recommendations to the Chancellor for changes to the tax rules governing unapproved employee share schemes.

Newspad invites readers to email news of your all-employee share scheme maturities and other employee share ownership news. Please contact the editor, Fred Hackworth, at: fhackworth@hurlstons.com

Posties' share scheme revived

The Government is accelerating plans to privatise Royal Mail by canvassing external advisers to set up an employee share scheme that will give the 145,000 employees a minimum ten percent stake in the company. The Department for Business, Innovation and Skills (BIS) launched a tender process to recruit an administrator for the staff share ownership programme, heralding what will be the largest privatisation for 30 years.

Advisers are due to be appointed in the coming weeks. Those chosen will oversee the placement of at least ten percent of Royal Mail's shares in the hands of its staff, fulfilling a commitment made by the Coalition as part of its plan to inject private capital into the company. The adviser(s) will oversee the necessary back-office infrastructure to supervise the scheme.

Sky News revealed earlier that Michael Fallon, the Business Minister overseeing the privatisation plans, had asked officials to devise a scheme designed to avoid the process of 'stagging', which blighted Margaret Thatcher's huge 1980s privatisations. Stags buy or receive shares at the offer price of a flotation and then sell them quickly into the market, once the price has risen. Royal Mail (RM) employees will be obliged to hold onto the shares they are awarded for

several months at least. It seems as if the Centre's advocacy of direct share-holding by employees ma have had effect.
The sell-off plan, which would be the largest since BT was privatised in 1984, could take the form of a sale to a single buyer or, more likely, a stock market listing that would line up RM as a candidate for the FTSE-100. Under the Postal Services Act passed in 2011, the Government cannot sell a single share in RM until it has made provisions for employees to own a stake in the company. A team of officials from BIS and the Shareholder Executive, which oversees the management of state-owned companies, is working for Mr Fallon on the employee share offering. A key question is whether or not the postal employees will be given their shares, or whether they will be asked to buy them at a discount to the flotation price. If the latter option is chosen, what kind of loan plan mechanism will be put in place in order to allow postal staff to buy shares in their business?
The plans are not yet finalised but Government sources confirmed that an anti-stagging clause may be included in the scheme to avoid potentially millions of pounds-worth of additional shares being dumped in the market as soon as the listing takes place. Under Moya Greene, RM's Canadian ceo, executives have discussed prospects with potential investors in the UK, Canada and the US in order to familiarise fund managers with its financial performance. Ms Greene has cut thousands of jobs as part of a move to automate many of RM's processes and modernise the company. Her actions have created tensions with trade unions, but their hostility to a privatisation process appears to have eased in the context of previous efforts. The company's efforts have begun to pay off, with operating profit increasing from £12m to £144m in the six months to September 2012, on the back of a surge in demand for sending parcels as consumers switch their buying habits to online retailers.

Thin cat cream

Admiral, the UK's second biggest car insurer and a poster boy for the Eso movement has announced a 15 percent rise in profits. As a result, around 6,500 staff at the Cardiff-based group will get free shares worth £3,000 for the full year - via the company's long-running all employee share scheme. Employees received £1,500 worth of free shares last September, when Admiral's prelims revealed a strong performance in the first half-year and now get another £1500 worth for the second half. Since Admiral's flotation in 2004, employees have received £3,000 worth of shares every year, which collectively reached more than £15m by value in 2011. The results showed pre-tax profits of £345m for the year to December 2012, compared to £299m the previous year.

Employees in the car insurance company **Esure** will enjoy a collective pay day from its imminent flotation of as much as £27.5m. Around 1,000 other employees will share a £3m bonus, following the flotation, paid in shares, which can be sold in three years' time. Pay-outs are based primarily on length of service. Peter Wood, the founder of 'Sheila's Wheels' insurance company, made £198m after selling one third of his stake as part of the group's £1.2bn IPO. Mr Wood's own windfall is valued at almost as much as the amount raised by Lloyds Banking Group when it sold its 70 percent stake just three years ago. The company is forecast to generate pre-tax profit of £135m this year and £154m in 2014. Esure was made famous by TV adverts starring the late Michael Winner,
Trust owned **John Lewis** retail chain handed its 84,700 staff an annual bonus worth 17 percent of their salary – the equivalent of nine weeks' pay – as the company continued to outperform its rivals. Staff at John Lewis's Oxford Street store whooped and clapped as the better-than-expected bonus – which is handed to all employees, from cashiers to chairman Charlie Mayfield – was revealed against a gloomy backdrop for some other retailers. The bonuses will be £4,000 for an employee on average salary. Although the John Lewis Partnership launched one of the UK's first ever employee benefit trusts – to make its employees indirect co-owners – it pays its staff bonuses in cash, not shares. However, JLP warned it was reviewing its pension, one of the few non-contributory final-salary schemes left in the country. The £211m bonus payout, up from £165.2m last year, followed a nine percent rise in sales to £8.47bn. Profits for the group, which owns the Waitrose supermarket chain as well as 39 department stores, were up almost 16 percent on last year to £409.6m, before accounting for tax and the bonus.
More than 11,000 **J Sainsbury** staff, from shelf stackers to senior managers will share a £4.33m windfall after two of its SAYE-Sharesave schemes matured. The biggest savers in the £23m, three-year plans will receive more than £2,000 each, tax-free. Sainsbury's said that staff participants made an average 21 percent increase on their original savings. This brought the value of shares that have matured in its savings scheme over the last seven years to more than £162m. "For more than 30 years, we have given colleagues right across the business the opportunity to share in our success through Sharesave," said Justin King, Sainsbury's ceo. "This is part of the wider benefits package we offer to reward our colleagues for the vital role they play day in, day out in delivering great service to our customers. We have already committed to increasing the number of colleagues (employees) holding shares in our business by 25 percent by 2020."
Unilever, the world's second largest consumer goods

group, is considering whether to introduce a share incentive scheme, in which all its 170,000 employees worldwide would be able to participate, said *The Daily Telegraph.* This was revealed in the remuneration section of Unilever's annual report, which said that one of the priorities this year was "to consider the introduction of an all-employee share scheme." Unilever declined to comment further. Its other remuneration priority this year is a review of its pay policies for directors, with a focus on the 'performance metrics' for long-term incentive arrangements. The company said that it wanted to ensure that reward remained aligned with its short term and long term strategy. Unilever shares are trading at record highs.

*The March issue of newspad contained a factually accurate, but out of date, story about a highly profitable employee share scheme maturity at **Tesco.** We apologise to readers for rehashing old news. Tesco told newspad that it no longer publicises share scheme maturities.*

RTI delayed for smaller SMEs

Businesses with less than 50 employees have been given a reprieve until October to get ready for the onset of Real Time Information (RTI), HM Revenue & Customs (HMRC) announced.

HMRC said it recognised that some small employers who pay employees weekly, or more frequently, but only process their payroll monthly, may need longer to adapt to reporting PAYE information in real time. Until October 5 employers with fewer than 50 employees, who find it difficult to report every payment to employees at the time of payment, may send information to HMRC by the date of their regular payroll run but no later than the end of the tax month (5th). This announcement took the edge off the biggest shake up of the PAYE system in almost 70 years, which gets under way for the rest of the business community on **April 6**. Employers will be required to move to a new way of reporting PAYE, in which they report each time they pay employees, rather than annually. With the introduction of RTI, employers will benefit from much simpler requirements for reporting to HMRC and the abolition of the extensive annual tax return that the old system required. RTI will reduce administrative burdens for employers by around £300m every year.

HMRC said it would continue to work with employer representatives to assess and understand the impact of RTI on the smallest businesses and consider whether improvements can be made to real time reporting to address their concerns, without compromising the benefits of RTI or the success of the Department for Work & Pensions' Universal Credit. The Forum of Private Business said: "HMRC has announced an 11th hour change to its Real Time Information system with the scheme just two weeks away from going live. Nobody likes last minute changes, and this development perhaps hints at something of a panic at HMRC that many, many small firms still aren't fully prepared for RTI."

For UK employees, particularly the one million people with multiple jobs, RTI will bring benefits as HMRC starts to get details of their tax every time their wages are paid, rather than just once a year. RTI should make HMRC's records more accurate and up-to-date and will begin to reduce the number of cases where someone is found to have under or overpaid tax during the year. Ruth Owen, HMRC's director general, personal tax, said: "Real Time Information will be better for employers, better for employees and better for Britain. This over time will reduce the costs of administration for businesses. Employers can find all the information they need about the new system on HMRC's website and small businesses can download free software to help them get ready. Winston Churchill was Prime Minister when PAYE was introduced. Little has changed in the system since then and it no longer fits the needs of a modern workforce. Feedback from employers in the pilot is that reporting PAYE in real time is easy." Support is available for employers, including: webinars, YouTube, face to face events, online interactive sessions, including Twitter Q&As. More information on RTI can be found at : www.hmrc.gov.uk/rti

EU to impose cap on bonuses

The European Union has agreed in principle to impose a strict limit on executive banking bonuses – under CRD4 - from as early as next year, although the details have yet to be hammered out by finance ministers.

The Council of the European Union published a document stating that EU finance ministers agreed caps on the bonuses that can be paid to bankers. UK Chancellor George Osborne was the only openly dissenting minister. From January 2014 bonuses will be restricted to 100 percent of bankers' annual salaries. However, if shareholders agree, bonuses can reach a maximum of 200 percent of salary. *Such bonuses must be backed by either a 66 percent majority of a quorum of shareholders representing 50 percent of shares. Alternatively if the quorum cannot be reached, such bonuses can be approved if they are supported by 75 percent of the shareholders present.*

Centre member **Clifford Chance** detailed the agreement: Banks will be required to pay out by reference to a set ratio between fixed and variable pay. In the UK, the cap will apply in principle to all firms (including third country firms) who are currently caught by the FSA Remuneration Code. There will be weighted treatment for long-term compensation that is deferred over five years, which may enable banks to deliver, in the long term, more value than the simple ratio would indicate. It is not yet clear how this weighting will work in practice. The caps will apply to employees of subsidiaries of European banks who work outside the EU too. Their bonuses will have to be capable of being clawed back and convertible into debt or wiped out in the case of doubt - as in the case of the bonus scheme announced by UBS in February this year. Although there is no draft legislation as of yet, this statement by the Council is binding and will clearly have an impact on the much reported bonus culture within certain financial institutions.

"The final EU text and the proposed amendments to the FSA Handbook are not yet available, but there is already a requirement in the Remuneration Code for firms to adopt appropriate ratios between the fixed and variable elements of total remuneration and to ensure that these components are "appropriately balanced" (albeit there are no limits on what that ratio should be). Our assumption is that this particular rule will be amended to include the new "fixed" ratio requirement," added Clifford Chance.

"Subject to seeing the final EU text, it is expected that the implementing legislation in the UK will contain some sort of transitional period (it is likely to apply from January 2014 in respect of the 2013 bonus round at the earliest since there are considerable legal difficulties in seeking to apply rules of this sort retrospectively). It may contain a carve out for pre-existing contractual arrangements, though the current carve out in the Remuneration Code."

The impending cap on bankers' bonuses provoked a furious response in the City. Senior bankers have raised fears that the cap could lead to jobs and business leaving London for jurisdictions that allow more flexibility on pay levels. In particular, the US and Asia are seen as possible beneficiaries.

As commentators have pointed out, many affected firms are considering substantial increases in fixed salary to allow sufficient headroom to pay larger bonuses when the ratio takes effect. There would appear to be nothing to prevent a firm increasing salary in this way, subject to compliance with the existing requirement that the fixed and variable elements of pay are "appropriately balanced".

Companies will need to bear in mind the Remuneration Code provision that "a firm must ensure that variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the Remuneration Code". Having said that, the FSA has consistently lobbied against the introduction of the bonus cap (arguing that it will be counter-productive), and may therefore be more sympathetic to schemes that allow firms to retain greater flexibility over payments made to Code Staff (when compared to simply raising salary levels).

"We are already considering a wide range of more sophisticated ways of increasing fixed remuneration/ salary in order to manage the ratio and would be very happy to discuss these ideas," added Clifford Chance.

"The FSA's Remuneration Code will need to be amended to reflect the cap. At the moment there is only a requirement for firms to have in place an appropriate ratio between fixed and variable remuneration. The FSA's current proportionality guidelines say that it may be appropriate for limited licence and limited activity firms (i.e. those which were in proportionality tier 4 and are now in proportionality level 3) to disapply this rule. We will have to wait and see how the new cap is treated under the proportionality principles and whether it only applies to the same extent as the current ratio rule."

Share Buy-Back regime improved

The government announced changes to the statutory regime for share buy backs as recommended in Centre member Graeme Nuttall's report to the Government – the Nuttall Review. These changes are to encourage employee share ownership in private companies through improving and simplifying the operation of internal share markets. The Review suggested further steps that would benefit employee owned companies undertaking share buy backs and these are now included in a package of six specific measures to facilitate the buy back process:

- Off-market share buy backs can be authorised by an ordinary, rather than special, resolution of the shareholders;
- A single ordinary resolution may be used to authorise multiple share buy backs for the purposes of or pursuant to an employees' share scheme (subject to certain financial and time limits);
- A private company can agree with a selling shareholder to pay in instalments for shares that are being bought back for the purposes of an employee share scheme;
- A private company is permitted to buy back shares each financial year up to a limit of either £15,000 or the cash equivalent of five percent of its share capital (whichever is lower) without having to identify whether this is funded from capital or distributable profits;
- A private company buying back shares out of capital for an employees' share scheme may do so using a special resolution and directors' solvency statement only

- Shares of all limited companies can be held as treasury shares following a buy back and subsequently can be reissued to new shareholders.

Three of the six measures are not restricted to buy backs in connection with an employee share scheme and will assist private companies generally and (concerning treasury shares) public companies whose shares are not currently 'qualifying shares'. The government will publish shortly the statutory instrument to effect the necessary amendments to Part 18 of the Companies Act 2006, with a view to enacting the changes this month.

Employee share ownership lawyers and Centre members **Postlethwaite** said that the government plans to conduct a review three years after enactment. This review will consider, among other things, whether: allowing share buybacks by ordinary resolutions has had any adverse consequences; short notice resolutions should be allowed; payment by instalment disadvantages departing shareholders and creditors;and there might be any advantage in allowing shares bought back out of capital or from a fresh issue to be held as treasury shares.

INTERNATIONAL

The Budget announcement confirming the UK Government's desire for a General Anti-Avoidance Rule (**GAAR**) to address abusive and artificial tax avoidance, runs the risk of further muddying the waters of tax avoidance and tax evasion. A clear distinction of how to define what abusive tax avoidance is needs to be established to define the parameters of tax planning, said Frédéric Donnedieu de Vabres, chairman of **Taxand. "**In many ways the GAAR is a fly in the ointment for the UK's standing as a competitive jurisdiction for attracting business and stands in surprising contrast to measures, such as the gradual reduction of the corporate income tax rate to 20 percent by 2015. The Government must learn lessons from the impact of similar legislation in other countries in order to avoid a potentially dangerous signal to global business. The UK is in a different position to many other countries that have previously introduced a GAAR, given the well established and sophisticated body of anti-avoidance case law which is already in place as well as a proliferation of targeted anti-avoidance rules. However, whilst the GAAR may well be seen by Government as a way of reducing the number of targeted anti-avoidance rules in the long run, there is a concern that the legislation will simply sit on top of the existing rules, creating additional complexity and uncertainty for companies when it is introduced. Moreover in Germany and South Africa, who were both relatively early adopters of a GAAR, implementation – meant to simplify anti-avoidance legislation - has actually predicated an increase in the number of specific anti-avoidance rules. This adds layers of complexity for taxpayers and has proved ineffectual in streamlining the system. Reinforcing concerns over a UK implementation of a GAAR is the experience of Australia, whose anti-avoidance regime is probably the most comparable with the UK Government's proposals and has been seen by many as having a significantly adverse impact on the competitiveness of Australia. But is GAAR implementation realistic? The global economy continues to evolve at such rapid speed; governments simply can't legislate at the same pace. And nor can one country tackle this alone. In order for the GAAR to work, it would require EU and OECD agreement and implementation. Looking at the example of Financial Transaction Tax (Tobin Tax), which is only being implemented in 11 EU member states, proves just how difficult this really is."

The head of global technology giant **Dassault Systemes** is the latest French business leader to threaten to move abroad because of looming tax rises. Bernard Charles, 55, joined a number of Gallic entrepreneurs protesting against the administration of Socialist president Francois Hollande, whose country is heading for a triple-dip recession. Mr Charles told *Le Monde* that he was particularly angry about taxes on share options, which could top 80 percent, warning that many of his managers were already leaving. Asked about a possible move overseas himself, he said: "So far, I have taken no decision and am looking into all aspects of it. But, to be clear, this isn't about plans for a 75 percent tax on all earnings above a million euros even if I do think that tax above a certain level is confiscatory. *My concern is the increase in the tax on capital, stock options and shares. Allowing managers to be shareholders is their chance to be part of a dream,"* he added. *"Everywhere, even in China, this works, even in the digital sector. We cannot hire the top managers without stock options or performance shares. Not being able to do this, means this part of the dream is broken."* Paris based Dassault, which specialises in 3D design software, employs 10,000 people worldwide. Mr Charles, ceo since 2002, said: "Fifteen years ago, we convinced our principal shareholder, Serge Dassault, to be associated with capital. I told him: *'You're the owner of the field, and I'm the cultivator. Rather than paying me in bags of wheat, I'd prefer that you gave me a piece of the field, so that we can develop it together."* Mr Charles added: "To obtain a plot of land, that is to say, a share in the capital the company and its employees, you will have to pay in taxes up to 80 percent of its value in France - and that is not tenable. It is normal that transfers of capital are taxed, but beyond 60 percent, you are out of the global race. If you live elsewhere, you do not experience this problem. As a result, those who benefit from these loyalty schemes are managers abroad. Residing in France becomes a big handicap. More broadly, our recruitment of top management will be outside of France.” Asked if any of his managers were already leaving, he said: “Yes, but I will not tell you how many.”

Swiss Say On Pay Revolution

The voters and cantons of Switzerland overwhelmingly accepted an initiative to give shareholders of Swiss listed companies a binding say on executive pay and to introduce further restrictions on executive remuneration, reported Swiss employment lawyers **Lenz & Staehelin** More than two-thirds of Swiss voters and all of Switzerland’s 26 cantons approved the *Popular Initiative Against Abusive Executive Compensation*. The key points of this initiative are a ban on board directors or other senior executives receiving certain payments, such as golden handshakes or golden parachutes at the point of recruitment or severance. Furthermore, managers won’t receive any bonuses when corporations for which they work are either bought or sold. At agms, shareholders in companies with Swiss HQs will have a binding vote over the aggregate remuneration of directors and the executive board. Separate votes on the base and variable remunerations are likely to be required (with a prospective vote for base remuneration and retrospective vote for variable remuneration).

The touchpaper was lit shortly before the referendum when, following media and public anger, Swiss pharma giant Novartis was forced to scrap a planned £50m ‘Golden Parachute’ to its departing chairman.

The initiative introduces two paragraphs in the Swiss Federal Constitution. The text sets out relatively general principles on certain executive compensation and corporate governance matters for Swiss listed companies, but does not contain a detailed legislative framework. The meaning of several of the new requirements is debatable. The Federal Council will have to submit a draft of the implementing legislation to the Swiss Parliament. The draft will then have to be adopted by both houses of the Parliament before it can eventually enter into force several years on. The definition of ‘base’ or ‘variable’ remuneration may be difficult for certain incentive schemes. Another area of uncertainty relates to the consequences of a rejection by shareholders of the board’s remuneration proposals. Since the shareholder vote is necessarily binding, the company may be unable to remunerate its directors and officers until a new shareholder meeting has been held. It remains to be seen how this problem will be dealt with. Under the new regime, shareholders will be able to attend an agm in person, to appoint a proxy of their choice, or to instruct the independent proxy appointed by the shareholders. The company itself will no longer be allowed to receive proxies from shareholders. Custodians will only be allowed to exercise voting rights on behalf of their clients if they are specifically instructed to do so**.** Shareholders must be given the ability to exercise their votes by *electronic means* without being required to attend the agm. However, systems making it possible to carry out such votes without risks of fraud or unauthorized participation are not generally available yet. Multinationals, including ABB, Nestlé, Roche, Schindler, Zurich Insurance, undermined the opposition to the referendum proposal by denying publicly that a ‘Yes’ vote would be a reason to leave Switzerland. However, Nestle warned that the referendum result would make Switzerland less attractive to corporations and executives.

Draft Directors’ Remuneration Reporting Regulations

On March 8, BIS published a final draft of the Directors’ Remuneration Reporting Regulations, which are due to come into force in October this year. Centre member **MM&K**, the leading remuneration consultancy, believes that BIS has lost its way on this and is in danger of undoing 18 months of careful consultation work.

“These rules apply to smaller main market quoted companies (small cap and fledgling) as much as to the top 350 companies – a huge administrative imposition on companies where there was not a problem in the first place,” said Cliff Weight. “The Government came into all of this to make reporting shorter and clearer. But the new rules are 19 pages long (53 paragraphs) compared with 11 pages (22 paragraphs) in the old (2008) rules. The latest draft has added another 15 paragraphs since the previous draft in June 2012. Every new paragraph stipulates another section of information required in the report.

“The Government introduced the mandatory reporting of a ‘single figure’ of total remuneration so readers of remuneration reports would have a common basis to compare directors’ pay (and its components). Ministers introduced the requirement for a future policy table, accompanied by scenario charts to allow readers to see the total remuneration outcome in different future company performance scenarios. All good stuff. But the new rules have a different definition of the single figure for historical reporting of pay (which includes share price gains) and the scenario chart (which excludes share price gains), a recipe for confusion.”

Mr Weight added: “Central to the Government’s ambitions was providing the means for reader to track the chief executive’s pay against company performance in the long-term. BIS had planned to replace the old five-year performance chart (which tracked the company’s total shareholder return relative to an index) with a chart of the ceo’s total remuneration and company total shareholder return over a ten-year period. MM&K has always argued for the inclusion of additional performance measures drawn from the Key Performance Indicators (KPIs) that companies are required to publish in their business review.

"What is in the latest draft? The Government has reverted to the old relative TSR chart, albeit over nine years and with a table of ceo total remuneration from which a reader could, theoretically, construct their own pay graph. Instead of historical performance against KPI's the new rules merely require an indication each year of how much incentive plans paid out against the maximum. The reader has no way of judging how good the performance was, except in relation to Total Shareholder Return.

"The latest draft has been unduly influenced by the recommendations of the Financial Reporting Lab, which is led by a small group of major institutional investors. This has weakened much of the Government innovation in the new regulations. Unless the latest changes are reversed, the retail investor and media commentators will be no better off after 18 months of Government consultation and 31 extra paragraphs of red tape. A full assessment of the latest draft reporting regulations can be read in the latest edition of *Board Walk* the MM&K remuneration committee briefing. Go to: http://tinyurl.com/c5c76gt

Cliff Weight or Damien Knight at MM&K are on 020 7283 7200

LTIPS not fit for purpose, claims PIRC

Pensions Investment Research Consultants (PIRC) used the latest edition of its shareholder voting guidelines to attack Long-Term Incentive Plans and IFRS accounting standards, which it claimed have been giving a distorted view of real corporate profit levels, upon which executive bonus schemes are often based. Despite the *shareholder spring* of 2012, PIRC concludes that there had been a market failure with directors being paid more than they are worth and that remuneration committees have failed to work properly.

These views surfaced in the 17th edition of its *UK Shareholder Voting Guidelines*, reported lawyers Shepherd & Wedderburn LLP. PIRC's SV Guidelines represent independent judgement of good corporate practice in accordance with the law. It applies the guidelines to all listed companies that it covers on the UK market (including those incorporated outside the UK). PIRC's view is that:

*Transactions with subsidiary companies are always related party transactions

*Open advertising should be encouraged for all appointments to the board

*The Davies disclosure recommendations are a minimum and it will look for disparity between the gender balance on the board and within the workforce

*Some directors' conflicts of interest are never justifiable and it will not support the election of directors with such conflicts, which are an issue where there is a major controlling shareholder

*The banking crisis revealed systemic problems in accounting standards, which PIRC believes are now contrary to the true and fair view standard of the law

*Accounting standards have been set contrary to the true and fair view standard of the law. *IFRS has been delivering profits that fail to give a true and fair view and that such distorted profits have been used to justify inappropriate remuneration

*It will not support approval of the annual report and accounts, the re-election of any member of the audit committee or the finance director if it is clear, or suspected, that a company's adherence to IFRS means the accounts do not provide a true and fair view

*PIRC continues to question certain aspects of the model of internal control statements in annual report and accounts, required by the Listing Rules and the UK Corporate Governance Code (Code). In particular Code Provision C.2.1 requires directors to include a statement in the annual report and accounts that it has reviewed the effectiveness of its internal control systems (referred to in the guidelines as Turnbull statements), which must be reviewed by the auditors (LR 9.8.10R(2)). PIRC has difficulties with new Code Provision C.3.8, which requires the annual report and accounts to include a section describing how the audit committee has discharged its responsibilities. PIRC interprets this provision as stating the audit committee has distinct responsibilities separate from the board

*The amendments to the new Code Provision C.3.7, recommending that FTSE 350 companies should put the external contract out to tender every ten years, do not go far enough

*Auditors are not reporting properly that the accounts of the parent company and the group give a true and fair view due to the defective accounting standards

*It will pay particular attention to the capital/share price dynamic when considering board composition, pay and accounting matters.

*In the case of an acquisition or merger, PIRC will examine the independence of the board and the extent to which independent due diligence has taken place.

PIRC has changed its guidelines on directors' remuneration. The key changes include its conclusion that LTIP schemes do not align with the interests of shareholders. Following its analysis of

LTIPs, PIRC concluded that they are inherently flawed and no longer fit for purpose as they are not long-term, do not incentivise directors and can be amended and manipulated by remuneration committees. So it will no longer support new LTIP based schemes. It believes that non-financial performance indicators in pay schemes should only be invoked if financial performance is satisfactory.
Furthermore, PIRC said it would not support: Executive director bonus schemes which include performance targets that represent responsibilities that should be part of the director's role; Pay schemes where quartile benchmarks are driving the setting of pay or remuneration schemes, or the re-election of a director, where a director receives rewards following a capital raising. PIRC is an independent research and advisory body that provides services to institutional investors on corporate governance/social responsibility. Its UK Shareholder Voting Guidelines 2013 can be accessed from:
www.pirc.co.uk/publications
The new **HMRC** address for advance valuation assurance is to be found online at:
www.hmrc.gov.uk/shareschemes/team.htm

The 2013 versions of Centre member **Deloitte**'s global tax rate tables which cover corporate tax rates and withholding tax rates in 65 countries are now available. These can be accessed at
www.deloitte.com/dits

New Centre member

The Centre welcomes into membership US based **W. L. Gore & Associates**, a global manufacturing enterprise, which has made its name by creating innovative, technology-driven products. The company's 50-plus year history of innovation extends from surgical implants to the first waterproof, breathable fabric and from guitar strings to electronic cables used in space exploration. Today the company provides thousands of products that have set performance standards in diverse consumer, industrial, electronic, medical and surgical markets. Gore's unique, team-based structure is perhaps as well-known as its innovative products. The company's emphasis on direct communication, minimal barriers to creativity and sound decision making has proved to be good business. By design, Gore's work environment encourages inventive thinking—the kind of inventive thinking that has generated thousands of valuable products and solutions. Because it encourages individual initiative and innovation, the company's corporate culture fosters both associate satisfaction and product success. A privately held company, whose annual sales exceed $3bn, Gore has a presence in more than 30 countries and employs more than 10,000 associates worldwide. The Centre's main contact at WL Gore & Associates is Holly Williams, whose contact co-ordinates are: Phone: +1(302) 292-4278 Fax: +1(302) 292-4776 and E-Mail: hwilliams@wlgore.com

On the move

News of **Michael Richards** ex Jersey based Lloyds TSB Trustees has returned to his roots and opened a guest house in Aberdovey on the west coast of Wales. Centre member **William Franklin** of Pett, Franklin & Co. LLP and his wife were his first guests recently. Details about Cartref Guest House can be found on its website.

Glasgow Rangers EBTs case appeal

The Upper Tribunal has updated its list of impending hearings, confirming that HMRC will be appealing against the decision in *Murray Group v HMRC* on the funding and operation of an employees' remuneration trust, involving Rangers Football Club, though there is no indication as to when the appeal will be heard, said Centre member **Deloitte**.

CONFERENCES

Jersey: April 19

This is your last chance to register for this year's Centre annual seminar for trustees, held in association with the Society of Trust & Estate Practitioners (STEP) Jersey branch, which takes place on **Friday morning, April 19** at the Royal Yacht Hotel. Topics tailored towards an audience of trustees administrators and trust lawyers will be covered by expert speakers, including: **Malcolm Hurlston** CBE, chairman of the ESOP Centre; **Helen Hatton**, Sator Consulting, who developed Jersey's regulatory regime; **Jim Wilson,** of **Ernst & Young**, who will address the issue: *EBT Settlement Opportunity: An Update*; **William Franklin**, Pett, Franklin & Co. LLP and **Graham Muir**, of law firm **Nabarro,** who will review recent tax and legal developments. Attendance prices are £295 for Centre members and £425 for non-members. Contact Centre UK director David Poole at: dpoole@esopcentre.com for registrations and enquiries.

BARCELONA: June 6 & 7

Two major issuer international share plan case histories will share the limelight at the Centre's 25th annual conference at the five-star Le Meridien Hotel, La Rambla, in central Barcelona, on Thursday & Friday, June 6 & 7. **Anne Walsh**, share plans manager at medical technology manufacturer **Smith & Nephew** will discuss the FTSE100 company's innovative international Sharesave plans, assisted by **John Daughtrey** of Smith & Nephew's plan advisers, **Equiniti.** The second case history will see **Kay**

Ballard, share plans manager at **Kingfisher plc,** outlining the problems the retailer faced when it decided to manage its share plan administration in-house. Sharing the podium with Kay will be **Peter Leach** of Kingfisher's advisers, **Killik Employee Services**.

Almost 40 people have already registered for this event. Two more slots have been added to the programme during the past few days: **Bob Grayson** of **Tapestry Compliance** will speak on *Global Hot Spots* in the remuneration regulatory world, while **Richard Nelson** of **Howells Data Services**, together with **Brian Symcox** of **Payroll Analytics** will deliver a presentation on *Making boardroom pay easy*.

Other speaker confirmed speaker slots include: **Arne Peder Blix** of **Accurate Equity**; **Patrick Neave**, of the **Association of British Insurers**, who will update delegates on its beefed up *executive compensation code*; **David Craddock** of **David Craddock Consultancy Services,** who will answer the key question – *Does Esop work commercially?* **Jim Wilson** of **Ernst & Young,** who will discuss *tax battles* between HMRC and EBTs; **Mike Pewton** of **GlobalSharePlans** on *Equity Plan Communications*; **Ray Coe** and **Ian Murphie** from **MM & K** will discuss *Pitfalls in executive compensation plan design*, while **Alasdair Friend** and **Narendra Acharya** (Chicago office) have entered the lists in **Baker & McKenzie LLP** livery, with their topic – *Managing share plans after cross-border takeovers.* **Sara Cohen** of **Lewis Silkin** and **Grant Barbour** of **Bedell Group** will discuss whether this a *historic moment for both tax approved and unapproved employee equity plans* in the context of the major pending legislative and regulatory changes. There is yet more in our bumper programme – *executive compensation* presentations by **Joe Saburn** of **Ogletree Deakins**, one of the biggest US employment law firms and from **Leslie Moss** of global consultants **Aon Hewitt**; plus **William Franklin** of Eso law firm, **Pett, Franklin & Co. LLP**. In addition, Centre international director **Fred Hackworth** will moderate a delegates' open debate. The final agenda can be reviewed on the Centre website at: www. esopcentre.com Contact Fred asap (email: fhackworth@hurlstons.com) with copy to esop@esopcentre.com if you want to attend. The Centre offers delegates a two night accommodation + conference package deal

Redistribution

A modest level of wealth redistribution could make a substantial difference to the standard of living for low-earners and would not be greatly missed by those at the top, according to new research by the High Pay Centre (HPC). Its report, *Top to Bottom: understanding fairer pay*, said that the share of national income going to the top one percent of the income distribution had more than doubled since 1979 to 14.5 percent from six percent. Other key findings include that there are 29,000 people in the UK (the top 0.11 percent of the income scale) who earn more than £500,000 a year, said the **Labour Research Department**. The HPC said that the government was about to give a tax break worth up to £2.7bn to the top one percent when the 50p rate is abolished this month (April), so take home pay for the rich would become even more 'disproportionate.' At the other end of the scale, there were 6.75m people who make up the bottom 25 percent of earners and who took home less than £800 a month. Five million of these were full-time employees. The HPC gave examples of what a modest level of redistribution would do for the lower paid: Ten percent redistributed from those earning £150,000 or more a year – less than one percent of the population - to the bottom 25 percent would equate to an average 55p an hour pay rise to £7.35, taking them closer to the national *Living Wage* rate of £7.45 an hour. If those earning over £300,000 gave up ten percent of their pay, the lowest paid 25 percent would get a rise of £40 a month.

Bonus & malus corner

Rio Tinto, the world's second biggest miner, unveiled tighter controls on executive pay, allowing it to claw back rewards already paid out. Under the new system, the company's remuneration committee can reduce or cancel unvested shares awarded under its long-term incentive plan if an executive is judged to be guilty of gross misconduct, is to blame for a serious error on the company's balance sheet, or been involved in out-of-the-ordinary events which damaged the group. In cases of deliberate misconduct, it will have the power recover the value of any shares that have vested. The changes, announced in Rio's annual report, bring the resource giant closer to the model introduced by many banks in recent years, in an effort to change the short-term bonus culture often blamed for the financial crisis.

According to Centre member **Deloitte,** the number of FTSE 100 companies with some form of claw back structure in place doubled to 61 percent between 2011 and 2012. However, just a handful of companies have arrangements that allow the claw back of shares that have vested, rather than those still to vest.

Barclays chose Budget Day to announce an award of £38.5m in shares to nine of its executive staff, despite having announced that it would claw back more than £400m in bonuses for 2012. Barclays' head of investment banking Rich Ricci received and cashed shares worth £17.5m and ceo Antony Jenkins received shares valued around £5.6m. Barclays announced it paid £1.8bn in bonuses throughout the organisation in 2012. These awards are in addition to that figure. A Barclays spokesman said: “The share releases detailed in this announcement include deferred shares awarded from previous years’ annual performance bonuses and, in some cases, vesting of historical LTIPs where the agreed performance conditions for vesting have been met. Barclays has revised its remuneration policy and all future incentive awards, short and long-term, will be based on the new principles that have been set out.” The disclosures came as Barclays published its own detailed breakdown of its employee compensation, which showed that 428 of its staff earned more than £1m - down from 473 last year. The bank said that 1,338 staff earned more than £500,000, while the about half of its employees earned £25,000 or less. Five of its staff earned more than £5m, down from 17 in 2012, while its highest paid non-board level executive received a salary and incentive package worth £3.75m. Fifty people at the bank earned between £2.5m and £5m.

Royal Bank of Scotland (RBS) revealed that 95 of its staff earned more than £1m last year, including one employee who was paid more than £5m. The taxpayer-backed lender said that nearly 2,000 of its employees earned more than £250,000 last year, while on average its staff were paid a salary of £34,000. Almost 370 so-called code staff at RBS, who work in jobs that are deemed to be crucial to the running of the bank, earned on average about £700,000. The details were disclosed in RBS’s remuneration report, which showed the bank’s highest paid senior executive below board level earned £4.8m. She is Ellen Alemany, ceo of **Citizens**, meaning she was paid £1.6m more than RBS ceo Stephen Hester, who received a total package worth £3.2m. However, Ms Alemany’s pay only made her the second highest paid RBS employee, with one unnamed banker earning as much as £5.5m last year. Mr Hester, was due to receive a bonus worth £700,000 as the bailed-out bank grappled with a new outbreak of computer problems that have left customers demanding compensation. Almost 230,000 shares were scheduled to be released to Hester as the final payment of the only bonus he has been awarded since taking the helm of the bank in 2008. The bonus was awarded to him in 2010 and the shares vest in two equal amounts on 7 March 2012 and 7 March 2013. His bonus vesting day coincided with a hardware fault that left NatWest customers unable to access their accounts between 9pm and 11pm one evening – which prompted threats by customers to leave the bank, after the second computer glitch in nine months. The bank’s IT meltdown last June forced Hester to waive his bonus for 2012, even before the Libor-rigging fine, which would have put him under pressure not take any payment. Liberal Democrat peer **Lord Oakeshott** said: “RBS paid their four fattest cats £21m of our money last year, with 95 people paid over £1m. They’re the best paid public sector workers by a mile, in a bank that keeps letting down the public by failing to lend. Let’s end this nonsense and nationalise RBS now.” RBS and Barclays both confirmed they had clawed back millions of pounds from their staff bonus pools as a result of Libor-rigging scandal that cost the banks a combined £680m in fines to the British and US authorities.

HSBC said it had paid 204 employees more than \$1.5m in 2012. Its total variable pay pool for 2012, including short-term bonuses and long-term incentive payments, was \$3.7bn, down from \$4.2bn the previous year. Its investment bankers were awarded a larger share, however, taking \$1.3bn compared with \$1.2bn in 2011. Ceo Stuart Gulliver received \$11.1m last year, despite missing cost and profit targets and a record money-laundering fine. HSBC said annual bonuses for 2012 -- in Gulliver’s case worth \$2.9m -- would be deferred over five years, rather than the usual three, and payable only if conditions attached to the U.S. settlement are met. The ceo’s package represents an eight fall compared with 2011 and his bonus was down 17 percent. However, performance against half the measures in HSBC’s long-term incentive scheme -- return on equity, cost efficiency, brand equity and compliance and reputation -- was deemed by the bank to be unworthy of any payout at all. Gulliver’s bonus for last year is equal to almost four times his base salary, a level that would fall foul of planned European Union bank variable reward capping rules.

When **Credit Suisse** Group announced that it would pay some of its bankers with parts of a portfolio of toxic assets, commentators talked it up as an eminently fair plan, but during three years, those bonds returned 75 percent. That fact comes in an article about Credit Suisse ceo Brady Dougan, who said that in recent years, investment bank shareholders had suffered more than employees. This is an area in which the *law of unintended consequences* operates reliably, he told *Bloomberg*. “Remember the outrage over excessive stock option grants? Bank executives have probably done much better over the last several years with the restricted shares that replaced them than they would have with stock options.”

The new head of **UBS**’s investment bank Andrea Orcel received a **\$26m** Golden Hello in 2012, the bank’s annual report revealed. Orcel is overhauling the investment business, with 2,000 job losses expected. UBS said that the deal was designed to make up for lost pay at his previous employer, Bank of America Merrill Lynch. UBS handed out $2.6bn in bonuses to top employees last year, the same amount as its annual loss recorded in 2012. The bank's chairman Axel Weber defended the bonuses, stating that despite UBS's loss, its executives helped make 'good progress' in securing the bank's future. He stressed the net loss was largely due to reorganisation costs and said that the bank's executives had to accept about ten percent lower bonuses than last year, just like other bank employees. UBS ceo Sergio Ermotti earned almost $9m last year, an increase of 40 percent on the previous year. He joined UBS in April 2011 and was named ceo in November 2011 after a rogue-trading scandal. "The group made significant progress under Mr Ermotti's leadership," UBS told its shareholders in the report. It has been a difficult year for the Swiss bank. It reported losses of $2.08bn for the last three months of 2012. That was largely due to the Libor rate-rigging scandal. Overall, 10,000 employees are expected to lose their jobs and some parts of its business are to be wound down. "UBS has still not learnt from the mistakes of the past," said the campaigning shareholder Brigitta Moser-Harder. She told *Reuters* that Mr Orcel's pay was "outrageous". She added: "*Not only did the investment bank contribute a loss in the billions, it is also being massively scaled back.*"

Insurance firm **Aviva** will pay no executive bonuses this year and is freezing pay for senior management after crashing into the red with a £3.1bn loss after tax. Mark Wilson, who took over as ceo last December, said that the pay decision had been made after discussions with Aviva's shareholders. "We've had continuing and ongoing and appropriate discussions with investors on pay. The reason is simple, it's a tough economic market. Given our results it was not appropriate that we pay bonuses to our executives, or pay rises to the top 400 people in the group." However, the insurer said it would not claw back bonuses previously awarded. Wilson said: "When it comes to bonuses, it has to be looked at in terms of legal obligations."

Ford Motors ceo Alan Mulally was awarded performance bonuses worth almost $12m, Ford disclosed to U.S. regulators. Ford said Mulally received $7m worth of shares that became fully vested recently, based on 2010 equity awards. In addition, Mulally was awarded 745,526 shares in stock options with a strike price of $12.75 a share. Ford filed documents with the U.S. Securities and Exchange Commission (SEC) showing the stock awards for Mulally and other Ford executives. Mulally, 67, has led the turnaround of the No. 2 U.S. automaker since he became ceo of a then-struggling company in 2006. Ford had lost $30bn between 2006 and 2008, and its share price reached $1.01 in late 2008. Last year Ford made a net profit of $5.7bn, its fourth consecutive year in the black. "We are committed to aligning executive compensation with the company's business performance and to tying a significant portion of executive compensation to long-term shareholder value," said a Ford spokesman. Mulally's 2012 pay will be revealed shortly. In 2011, he was paid $2m in salary and $5.5m in cash bonuses in addition to stock options and equity awards. The 2013 stock options of 745,526 shares awarded Mulally will be vested in thirds over the next three years, but he will not make any money if the share price does not go above $12.75. More than 909,000 shares of restricted stock were granted to Mulally as a 2012 performance bonus, as well as an incremental bonus, for successfully cutting the number of undercarriages for Ford's vehicles, which makes vehicle manufacture more efficient and was part of streamlining the company. These shares will not vest until March 2015. About 45 percent of the 909,000 shares will be used to pay taxes, Ford said. Another $7m of stock came in the form of 543,734 shares from awards made in 2010 that became fully vested recently.

General Dynamics Corp approved $7.5m in 2013 bonus payments to its top executives, despite massive losses late last year. Almost half the bonuses by value went to former chairman and ceo Jay Johnson, according to a filing with the SEC. Johnson's $3.6m bonus was given for services during 2012, in accordance with his retirement agreement announced last June. New ceo Phebe Novakovic collected $2m for earlier positions during 2012, including executive vp of the Marine Systems group until May 2012 and president/coo from May until December 2012. Cfo Hugh Redd and Gerard DeMuro, former executive vp, were each awarded $500,000. DeMuro retired in February. David Heebner, executive vp of the Combat Systems group, received $905,000. The bonuses came even though General Dynamics reported a net loss of $2.13bn during fourth quarter of 2012 and a 2.6 percent dip in full-year revenue to $31.5bn.

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