Vol 27 No 7 April 2014

it's our business

newspad of the Employee Share Ownership Centre

Cable threatens new executive reward clampdown

British companies face tougher executive pay regulations unless they act rapidly to comply with the Government's new rules, Vince Cable has warned.
The Business Secretary said that he had evidence that some remuneration committees were bending new rules introduced last year in an effort to continue to deliver bumper total reward packets to executives.
He issued a warning of a fresh, tougher Government crackdown on pay at a private dinner with more than 30 chairmen of FTSE100 remuneration committees, reported *The Telegraph.*
"If companies and investors are unable or unwilling to act responsibly, the pressure for stronger measures will be hard to ignore," Mr Cable said: "Under such circumstances, I would consider options including stricter regulatory oversight of pay reports and policies, a requirement on shareholders to disclose how they have voted on pay, or a requirement to consult employees on pay."
Mr Cable has been a driving force behind Government efforts to restrain excessive corporate pay. He argues that between 1998 and 2010, average pay for top ceos rose 13 percent each year, despite no overall increase in the FTSE100 index over that time.
In October last year, new pay reforms were introduced including the requirement for companies to put their remuneration policies to a binding shareholder vote at least every three years. Companies are now required to be clearer about total executive pay packets. During the consultation process ahead of the rules, some companies and pay experts warned that restrictive pay rules would damage the UK's competitiveness.
"There is evidence that some remuneration committees have set about restoring a proper link between pay and performance in light of the Government's reforms – with greater transparency and better engagement between companies and shareholders," Mr Cable said. "However, I have heard some concerns that the improvements are far from universal, with some committees said to be observing the letter of the law but ignoring the spirit."
Mr Cable is planning to issue a personal warning to the chairman of every FTSE100 remuneration committee: "This is the time for companies - and investors - to show they can act responsibly. I will therefore be writing to remuneration committee chairs to ask them to fully observe the spirit of the Government's reforms currently in force. After this voting season is over, I will be taking stock with them to ensure that our reforms are on track to restore the link between pay and performance."
Cable's threat is very timely as Centre chairman **Malcolm Hurlston CBE** was warned in recent weeks that a number of quoted leading UK companies are non -compliant, or only semi-compliant with the new executive compensation regulations.
Newspad has reported that in the banking sector, HSBC, Lloyds and Barclays are all planning to give top staff monthly or quarterly allowances in cash to boost their fixed pay.
In addition, some corporate executive committees are allegedly being told that 'legitimate' ways can be found to side-step the spirit of the regulations. Companies love such advice because it provides air cover to avoid an important part of the new regulations.

From the Chairman

Clifford Chance will be hosting the announcement seminar for the first quarter results for the Esop Index on Thursday. Standing at 715 (2002=100) on December 31, it has had a roller coaster three months. Our last event of the quarter was hosted in New York by Linklaters and Solium GSP has produced an EU options study to help us inform the European Commission's latest initiative. The Centre's strength lies in the support of its members which enables us to reach far and wide and give influence to share scheme work. Our work will help company share scheme staff to gain influence in their companies too as they contribute to national wellbeing as well as corporate responsibility.

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@esopcentre.com
www.esopcentre.com

eFinancialCareers' latest *Global Bonus Survey* revealed that the average UK financial services employee bonus increased by 29 percent in 2013 compared to the previous year. City employees command the highest average bonus in comparison to their colleagues in the world's major financial markets. Yet, a significant proportion (41 percent) declared that their bonus was still beneath their expectations. The survey, to which more than 700 UK-based financial services professionals responded, revealed that almost half of respondents (49 percent) reported an increase – compared to 40 percent last year, while 18 percent reported a decrease.

The **European Commission** will propose boosting shareholder's power to control executive pay at listed companies, in a move that it says could curtail excessive awards. Michel Barnier, the European Union's financial services chief, will call for shareholders to vote on pay packages at publicly traded firms in the 28-nation bloc, according to Chantal Hughes, his spokeswoman. The so-called 'say on pay' measure takes inspiration from similar initiatives in EU nations including Sweden and Belgium, she said in an e-mail. Barnier intends to publish the proposals within weeks, she said. The plan will make it harder for "executives to get paid excessive or unjustified amounts despite weak performance by the company," Hughes said. The move is part of a broader EU push to boost shareholder engagement as a means of improving corporate governance and business strategy in Europe.

Barnier's push for more shareholder power over remuneration adds to EU moves to rein in variable pay. Since the outbreak of the 2008 financial crisis, the EU has agreed to ban banker bonuses of more than twice fixed pay, and approved pay rules for managers of hedge funds and other EU investment vehicles known as Undertakings for Collective Investment in Transferable Securities, or UCITS.

The UK has begun a legal challenge against the banker bonus cap and is among a group of nations seeking changes to a deal reached last month on UCITS.

Barnier's plans for listed companies don't seek to impose any caps on pay and are focused on boosting shareholder awareness and oversight, Hughes said.

The **US Securities and Exchange Commission** proposed regulations that would require public companies to reveal their ceo-to-ordinary employee pay ratios, but the agency has yet to finalise them. "We are expecting that we'll see final regulations sometime this spring," said Joseph McCafferty, of *Compliance Week,* an information service on corporate governance, risk and compliance. He said the move is surrounded by more controversy than might be expected. "Calculating what actually counts as pay can be difficult because you have pay, bonuses, the 401(k) ... it's not always clear what is part of the compensation and what is not," he said. "It's hard to find data on what every employee is making at any given time because of the differences in global currencies and employees working part time and coming and going." Another concern was that the figures would be industry dependent. "The wages of retail or food-service employees would look a lot different than the wages of workers at high-tech firms," McCafferty explained.

The AFL-CIO's *Executive Pay Watch* revealed that ceo pay had skyrocketed over the past few decades, while the average employee's pay had stagnated despite increases in productivity. Their calculations didn't differentiate worker pay by industry, nor did it include employee benefits. But it still reveals the massive gaps that exist between the top and the bottom. *In 1982 ceos were earning 42 times more than average rank-and-file employees. A decade later, that ratio had grown to 201 times more, and by 2012 it jumped to 354 times more.*

Bloomberg calculated ratios based on the US government's industry-specific averages for the pay and benefits of rank-and-file workers. According to their results, ceos at eight major corporations earn more than 1,000 times the pay and benefits of the average employee in their respective industries. Ronald Johnson, the former ceo of J.C. Penney Co., topped the list with a pay ratio 1,795 times the pay and benefits of the average employee in that industry, according to Bloomberg. Gary Kaplan, a job search consultant in Pasadena, has seen the ceo-to-employee pay ratio widen over the years. Rank-and-file workers aren't the only ones suffering. Employees in mid-level and upper-management positions are feeling the squeeze too, he said. "I've been around long enough to have seen dramatic shifts in salary differentials," Kaplan said. "People still get small raises every year, but I can remember a time when it wasn't uncommon to get a ten percent raise if your performance was above par. That was very common. But now many pay rises are not even keeping pace with inflation." Kaplan said the situation is unsettling — particularly for the average US employee. I have great anxiety about this situation," he said. "I don't know how much longer this can continue before there is some form of pushback. I'm not opposed to people becoming successful, because capitalism is the basis of our society. But I worry that if there are masses and masses of people who are classified as under-class and college graduates who are spending the bulk of their lifetime paying off student loans ... that there will be some pushback."

Wall Street bonuses rose 15 percent last year, to the highest level since the global financial crisis, according to the New York state finance chief. The average bonus rose to $164,530 (£99,000) in 2013, with total bonus payments rising to $26.7bn, state comptroller Thomas DiNapoli estimated. His report said the payments were boosted in part by compensation deferred from previous years. Since the global financial crisis unfolded, regulators have called on Wall Street's banks and brokerage firms to offer longer-term bonus structures. This, the regulators

believe, would prevent employees from making high-risk investments that boost their bonuses in one year, but could cause longer-term financial damage. Instead, employees would be forced to consider the future prospects of the investments they make. As a result, there has been a shift toward more deferred compensation.

New York Faculty plans for 2015

The New York Faculty of the Centre is making plans for a larger scale repeat in the wake of last week's high table seminar at Linklaters on the Avenue of the Americas.

Federal Reserve Board economist Antonio Falato presented his conclusions on why ceo reward had soared so high it appeared to have got out of hand.

There were three main causes, said Falato. First, companies were much bigger. Secondly ceo tenure was much shorter, implying higher career risk. Thirdly, innovation had risen fast, judged by the proxy of R&D budgets.

Each point was strongly contested by the Faculty (Joe Saburn, Jim Reda and Brian Purcell from the US and Alan Judes, William Franklin and David Craddock from the UK) but they were equally awed by the resources wielded by the Fed in reaching the conclusions. Antonio Falato's slides are available from the Centre.

The event concluded with presentations from William Franklin on Mondragon (where a tight top pay ratio had failed to save the leading entity in the Basque cooperative group) and from David Craddock on wider ambitious for the sector to combat income inequality.

The stateside participants undertook to gain traction for the Centre's international and high level work. FATCA, IRS and OECD received attention.

Centre chairman Malcolm Hurlston CBE thanked Linklaters for hosting, Antonio Falato for presenting (and joining members for an informal dinner at the Penn Club the previous evening) and the Faculty for creating an event so interactive there was no need for a Q&A session at the end.

Murphy's girl quits over her employee ownership plan

The heiress of a £200m family business has quit the company after her plans to turn it into a semi co-operative were rejected. Caroline Murphy, a director of construction firm **Murphy Group**, had decided to hand part control over the firm set up by her father to its 3,500-strong work force. The plan is said to have upset some of her fellow board members, including her mother and two brothers. She resigned as vice-chairman and executive board member of the Murphy Group after fellow executives baulked at her vision, which is modelled on the Spanish co-operative **Mondragon**.

Miss Murphy, 31, a civil engineering graduate of Bristol University, is committed to selling her 20 percent stake in the firm – worth around £40m – to staff, in some cases for peppercorn sums. She believes the co-op experiment is a form of direct democracy under which employees vote on key decisions. Long-serving workers get more shares, while those on low wages pay little for the stock.

Miss Murphy, who inherited the company which specialises in civil engineering from her late father, John, said the split was amicable. She told *The Times*: "In every family, on every board, people come with different views. I've said I want it to happen and it's not happening. It's not something everyone's agreed to. The natural extension of my father's values, in my view, is the development of the Murphy Group into an employee-owned structure," she said.

"I believe the future of his legacy is best entrusted into the capable hands of its people. I have been vocal in my belief that leadership of this business must include those working on the ground if it is to continue to deliver for the clients who have placed their trust in us over the years. Taking into account the direction of the board's interests, the current structure holds no space for me to develop this process further."

Ms Murphy concluded by wishing all within the Murphy Group the greatest success for the future. She said she hoped the company would go on to represent her father and continue to provide work and opportunity for many years to come.

She was inspired to adopt the model after a visit to Mondragon, which operates grocery shops, car factories and local banks. "On the day we visited, their supermarket workers had just taken a decision – this was people stacking shelves, working on the tills – to work longer hours for no pay increase. That was what they voted for because they understood the competition, the environment their chain was operating in and they could see that was the right decision."

She said it was a myth that workers with power will always award themselves a pay increase. Another reason for her philosophy was to empower 'voiceless' people, she added. Miss Murphy is a union activist, gay rights advocate and a campaigner against sexual violence. Murphys, which has an annual turnover of £665m, has won many top construction contracts, including the London Olympic Park and the Channel Tunnel Rail Link.

Budget: expat share schemes tax

The Budget had only one surprise for share schemes, which is that proposed employee equity tax and NIC changes for *expatriate* employees (both inbound and outbound) will now take effect from April next year, rather than September this year, as previously proposed, said Nicholas Stretch of **CMS Cameron McKenna.**

"However, the absence of fresh material in the Budget is just a sign of how much is now mounting up outside the statement, although it confirmed that all other draft legislative proposals produced last December will be implemented (although some changes in detail are being made). From April 6, there will be a move

away from the current approval regime, in which HMRC must read and approve all key scheme paperwork in advance of tax-approved awards being made (other than for EMI options), to a regime in which companies self-certify their tax-advantaged plans.

"This is on the whole a liberating change as companies will no longer be reliant on HMRC timescales and forced to agree every single point with HMRC," said Stretch. "However, it is accompanied by a need to register plans, make a declaration that they are compliant with the relevant legislation and a risk that HMRC may challenge plans later. From summer this year, there will be some minor changes to *non-approved* arrangements for employee shares, and a new arrangement whereby individuals can sell a controlling interest in a company to a trust without any capital gains tax charge.

"One thing that advisers and companies will need to keep a close eye on is those changes to tax-advantaged share plans that take effect automatically without any need to change rules (and whether they take effect for options and awards already granted or only for new grants) or other plan documentation and those changes that are voluntary for companies to adopt or need plan rule or documentation changes to be made by companies.

"The legislation itself is not likely to be final word as HMRC is significantly changing their guidance manuals as part of the change to self-certification and there is still no sign of its views on a large number of issues," he added.

HMRC announced that it will consult further on more radical proposals (originally proposed by the Office of Tax Simplification) which include delaying an income tax charge, which would otherwise arise on private company shares until those shares become marketable and a new form of employee trust which would have tax advantages. HMRC's webpage with relevant announcements can be found here:
http://tinyurl.com/pk4zbom.

The annual individual savings account (Isa) allowance will be increased to £15,000 from July 1 this year, Chancellor George Osborne announced. This will allow staff transferring exercised shares into an Isa from a maturing employee share plan (such as Sharesave) to protect more of their gains above the tax-free limit (£10,900 from April 2014) from capital gains tax (CGT). The current limit is £11,520 for a stocks and shares Isa and £5,760 for a cash Isa. From July 1, the two types of Isa will be merged in to a single new Isa taking both cash and shares. Staff transferring shares from an employee share plan need to do so within 90 days in order to maintain the tax protection from CGT. Elissa Bayer, of **Investec Wealth & Investment,** said: "It's encouraging to see that savers can benefit from a new breed of tax-free Isas with an allowance of £15,000, and the end to the absurd rule that only allows savers to transfer cash Isas into stocks and shares and not the other way round. This will boost the savings industry and allow basic-rate taxpayers to benefit from greater flexibility."

Big Sharesave windfall for BT staff

Thousands of BT engineers, call centre workers and other frontline staff expect to share a £1.3bn windfall when a five-year employee share scheme vests this summer, with many receiving life-changing amounts. Thanks to a dramatic rise in the phone company's stock market value, 24,000 BT workers, equivalent to one-third of BT's British workforce, will join middle and senior managers in sharing profits averaging more than £46,000, provided its share price holds up until vesting this summer.

Staff were offered the chance to buy into BT's Sharesave scheme at a fixed price, which averaged 66p. After a turnaround in BT's fortunes under former ceo Ian Livingston, those shares are worth around 385p each. "Secretarial staff, drivers and engineers paying off their mortgages – people write to me and say it's changed their lives," Livingston told the *Sunday Times.* Some 332m shares from the scheme are due to vest, allowing staff to share in a total pot worth £1.2bn at the current share price. Those who invested the maximum – £225 a month over five years – would receive shares worth £80,000, netting a profit of about £66,500. Many of those who will benefit are in frontline posts, with 60 percent of the windfall recipients working in what BT describes as team-level jobs. The rest are middle and senior managers.

Almost 11,000 **Sainsbury's** colleagues will share in the company's success as two Sharesave plans mature, with the biggest savers in the five-year plan set for a tax-free gain of more than £10,000 each. With a share price of 338p when the three-year and five-year plans matured, Sainsbury's colleagues saw an increase of 68 percent (five year plan) and 13 percent (three year plan) on their original savings. The value of shares subject to the maturity over the last eight years is over £190m. Sainsbury's ceo Justin King, said: "I'm delighted to see another year of great Sharesave returns to over 11,000 of our colleagues. It's a great way to share our success with colleagues working right across our business." All Sainsbury's colleagues (employees) who have at least three months continuous service are invited to join. Almost 34,300 employees are saving between £5 and £250 a month in 71,334 Sainsbury's Sharesave contracts. Colleagues who joined the 2008 five-year Sharesave plan will receive a tax free bonus of seven times their monthly savings - option price 224p. Those who joined the 2010 three-year plan will receive a one-off taxable bonus, paid by Sainsbury's, equivalent to 1.5 percent interest on their monthly savings - option price 297p. Participants have until August 31 to decide what they would like to do with their savings and bonus. They have three choices: they can either use their savings and bonus to buy shares at the option price and keep them; use all of the savings and bonus to buy shares at

the option price and sell them immediately; or lastly take all their savings and bonus as cash.

Discount retailer **Poundland** priced its listing at 300p, valuing the company at £750m. The shares then jumped from 300p to 385p. This valued the company at an eye-popping £960m. Around 155 senior managers at Poundland shared a £110m windfall, with the most going to just nine directors.

Pets at Home set a price for a stock market listing that could have scooped staff up to £130m, as the 2014 float frenzy continued. The pet shop and vet firm, largely owned by private equity group KKR, listed for its stock market debut at 245p, raising £280m in a float valuing the company at £1.2bn. Around 500 employees own ten percent of the company, meaning a potential windfall of up to £130m if the value of their stakes were crystallised. On average, each of them would have had stock worth up to £260,000 if the float had gone well, but the share price plunged on the first day of trading, before eventually closing almost three percent down at a lacklustre 238p. KKR, which bought the company for £995m four years ago, will be taking the bulk of £210m of proceeds from the £280m raised in the offer. It is reducing its stake to 46.2 percent in the business, so the company has a free float of around 40 percent, excluding an over-allotment option that could see a further 30m shares issued. The pet retailer's employees will share KKR's payday, with store managers who invested £1,000 expected to receive five times as much as their investment from the IPO. Individual retailers and staff were invited to participate in the offer too. About 85 percent of the offer went to institutional investors, with the remainder allocated to staff and members of the public.

Meanwhile British online fashion retailer **Boohoo.com** said it planned to push ahead with its listing on London's junior AIM market. It plans to raise more than £100m and will be valued at around £500m

The UK's biggest sports retailer, **Sports Direct**, plans to give founder **Mike Ashley** a share award worth £65.8m**.** The firm will propose that Newcastle United owner Mr Ashley be granted eight million ords. The largest institutional shareholder has indicated that it will vote to approve the package on April 4. The shares would pay out in July 2018 for Mr Ashley, who currently receives no salary or bonus from Sports Direct, which he founded in 1982. The company wants to award the shares in recognition of the firm's success. Odey Asset Management has confirmed that it intends to vote in favour of the award, Sports Direct chairman Keith Hellawell said. The share award is conditional on the firm achieving full-year core earnings of £330m in 2014 and £410m in 2015, and other financial conditions. A similar proposed award for Mr Ashley has been unsuccessful twice before. One came after shareholder concerns over related performance targets, and another award attempt by the firm failed to be put to a vote.

Lloyds: UK Financial Investments, the body that manages the UK's stakes in Lloyds and Royal Bank of Scotland, sold 5.6bn Lloyds shares to City institutions at 75.5p each, allowing taxpayers to recover £4.2bn more of the bail-out cash they put into Lloyds to keep it afloat. The sale cut the government's holding in the bank to 24.9 percent, down from 39 percent last September, when it began to sell shares. UKFI is expected to try to sell off all the remaining shares it holds in Lloyds before the general election in 2015 and there is speculation that the next share sale tranche, scheduled for autumn, will involve a retail offer, including a special offer to Lloyds employees. The Centre plans to press for access for former bank employees who suffered in the crash.

New share scheme investment limits summarised

The new raised employee savings/investment limits for HMRC tax-approved share schemes, which apply from April 6 (2014), are:

***New** SAYE savings contracts will be subject to a limit of £500 per month (up from £250);

*The maximum value of free shares that can be awarded under a Share Incentive Plan (SIP) will be £3,600 (up from £3,000);

*The maximum value of SIP partnership shares that can be purchased will be £1,800, or £150 per month (up from £1,500), but still limited to a maximum ten percent of salary;

*The maximum value of matching awards that can be made under a SIP will be £3,600 (up from £3,000).

The new limits will not automatically override limits currently specified in existing rules which will need to be amended to take account of the increase. However, many approved all-employee plans simply cross-refer to the limits as specified in the applicable schedule of the legislation, in which case the new limits will automatically apply from April 6.

Regarding SIPs, if the rules cross-refer to Schedule 2 of ITEPA, communication of the new limits can be made prior to April 6, provided any share awards take place on or after April 6 2014. Where employees have signed up to a free share agreement with no specified end date (i.e. an 'evergreen' agreement), the precise terms of the agreement will determine whether a new agreement is required. Companies that are looking to commence partnership share deductions from employees' salary in April 2014 will need to ensure that employees have amended their contribution rates (either by notifying that they wish to increase, or by entering into a new award agreement) in sufficient time for the instructions to be actioned prior to the April payroll cut-off date.

Re-launching approved share plans using the new higher limits will, if taken up, increase the costs associated with operating the plans and therefore companies should calculate the estimated additional costs in terms of cash-flow, share dilution and the additional accounting charge. There is no requirement on companies to offer employees the full increase in the limits, but employees may expect their companies

to do so. An issue often overlooked is whether payroll systems are able to process payments at the higher level. As the approved plan limits have not been increased for so long many payroll systems have the limits hard wired and so additional time may have to be factored in for payroll systems to be updated.

Castlefield launches EO investment vehicle on ISDX Growth Market

A bold new employee ownership investment vehicle, **Capital for Colleagues**, has been admitted to the ISDX Growth Market with the support of Centre member **Castlefield Investment Partners**.

The specialist vehicle invests in businesses where employees own a significant stake in the company, whether through direct (share) ownership, indirect ownership or a combination of the two. It was admitted to the ISDX Growth Market on March 17 after raising £2.19m through the placing of more than 4.3m ordinary shares at a price of 50p per share. The market capitalisation is now around £3.7m.

Founded in 2011 and incorporated in 2013, the fund operates on the premise that employee owned businesses constitute a distinct asset class with underappreciated investment potential. In a statement announcing the ISDX Growth Market listing, the company explained that its "investment strategy is driven by the Directors' belief that co-ownership is a proven, successful business model which improves productivity, creates wealth and provides a stable employment environment, thereby generating the possibility of attractive commercial returns for investors."

Capital for Colleagues has made four investments, with plans to invest in a diverse portfolio of businesses in the UK and Ireland.

Centre member Castlefield Investment Partners, part of the Castlefield family of investment and advisory businesses, has advised Capital for Colleagues since its founding as an LLP in 2011. For further information please contact David Gorman on 0161 233 4890. Full details of the ISDX listing can be found here: *http://tinyurl.com/ooqnsxv*

On The Move

Long-serving Centre conference speaker **Michael Whalley** is retiring from the London office of **Minter Ellison.** Michael told *newspad*: "I have spent 23 years or more advising on employee equity in the Australian context and have made many fine friends and professional contacts through the ESOP Centre and its conferences. It was an invitation from Malcolm to speak at a conference in Brussels in or around 1990 that got me into this field and I have enjoyed it enormously." His black tie dinner send-off, to celebrate the 40th anniversary of Minter Ellison's London office at 10 Dominion Street, EC2M 2EE, his 35 years with the firm and his forthcoming retirement as a partner, was taking place at the Australian High Commission in London on Wednesday April 2 2014, in the presence of the High Commissioner, the **Hon. Mike Rann**. London office Minter Ellison colleague **Aidan Douglas** will provide advice on Australian scheme offers in the future and he can be contacted for any assistance required. Aidan already works regularly with many Centre members in this area.

CONFERENCES

Jersey 2014

An impromptu cast of speakers rallied to deliver the ESOP Centre's annual Jersey share schemes conference on March 14 after heavy fog prevented seven out of the eight billed speakers from arriving in Jersey (including island speakers..)

The scene appeared bleak when Centre chairman **Malcolm Hurlston CBE** and UK coordinator Harry Atkinson met for crisis talks at the Royal Yacht Hotel in Jersey, on the eve of the conference: speakers Jonathan Fletcher Rogers (**Abbiss Cadres**), Graham Muir (**Nabarro**) and Helen Hatton (**Sator Regulatory**) were grounded in Gatwick; Stephen Woodhouse (**Pett Franklin & Co. LLP**) and David Craddock (**David Craddock Consultancy Services**) were adrift in Birmingham, the latter after circling Jersey airport before being returned home; Alison MacKrill (**Carey Olsen**) was cut off just thirty miles away in Guernsey; and Rosemary Marr (**Nedbank**) stranded in the Isle of Man. Only the presence of Paul Malin (**Haines Watts**), who by luck or tremendous foresight had arrived on the island two days ahead of the conference, prevented a total cull of the line-up.

Fortunately friends of the Centre were on hand in support, allowing the conference to be a success.

Stuart Bailey of **Accurate Equity** kindly and competently delivered Jonathan Fletcher Rogers's planned overview of Coalition reforms to approved and non-approved share schemes.

Paul Malin delivered not one but two presentations, guiding delegates through the common challenges associated with employee benefit trusts and delving into the technical detail of EBT settlements with HMRC.

Davinia Smith of **Alter Domus** took the place of absent panellists Helen Hatton and Rosemary Marr to lead a discussion on Jersey's future as a regulated jurisdiction in the new world of global tax transparency.

In addition, chairman Malcolm Hurlston provided the EU context to the latest threats in the register of trusts and data protection regulation and Harry Atkinson spoke about his unpublished research paper analysing the latest HMRC employee share schemes statistics.

Every year the Centre arranges an update on employee equity and plan administration by bringing a delegation of expert mainland speakers to Jersey for a conference and networking event, mainly for the benefit of trustees. The event is held in partnership with the **Society of Trust and Estate Practitioners (STEP)**.

The past few years have witnessed welcome developments but several missed opportunities for share scheme watchers. With just one more budget

before the next general election it was an opportune time for Stuart Bailey - drawing on the material compiled by Jonathan Fletcher Rogers - to summarise the Coalition's reform record and turn one eye towards the future of employee share ownership. The following timeline produced by the Centre may provide readers of *newspad* with a useful record:

- March 2012, OTS review of tax advantaged employee share schemes concludes with the publication of a final report
- June - September 2012, HMRC consultation on the OTS recommendations for tax advantaged employee share schemes
- July 2012, 'Sharing success: the Nuttall review of employee ownership' published
- December 2012, summary of responses published following HMRC's consultation on tax advantaged employee share schemes; the government confirms its intention to introduce self-certification and other measures recommended by the OTS
- October - November 2012, BIS consultation on 'Employee ownership and share buy backs: implementation of Nuttall Review Recommendation V'
- January 2013, the OTS review of non-approved employee share schemes concludes with the publication of a final report
- February 2013, the government issues its response following the BIS consultation on 'Recommendation V'
- April 2013, Companies Act 2006 (Amendment of Part 18) Regulations 2013 gives force to the changes introduced as a result of the consultation on 'Recommendation V'
- May - August 2013, HMRC consultation on the OTS recommendations for non-approved share schemes
- July - September 2013, HM Treasury consultation on 'Supporting the employee ownership sector'
- November 2013, BIS issues 'The Nuttall Review of employee ownership: one year on report'
- November 2013 - February 2014, BIS consultation on 'Amending the rules against perpetuities and further reducing the complexity of employee ownership'
- December 2013, Autumn Statement
- December 2013, 'Supporting the employee ownership sector': summary of consultation responses published
- December 2013, 'OTS: review of unapproved shared schemes': summary of consultation responses published
- December 2013, Finance Bill 2014 draft legislation and explanatory notes published
- December 2013, HMRC instructional notes for employers published: 'Employment Related Securities: Registration, self-certification and online filing of employee share scheme arrangements'
- December 2013 - February 2014, consultation on Finance Bill 2014 draft legislation
- March 19 2014, Budget day: the government confirms the increases in SIP and SAYE limits and announces that the introduction of tax simplification measures for internationally mobile employees will be pushed back from September 2014 to April 2015
- April 2014, various measures come into effect, including: increases to SIP and SAYE limits; changes to section 222 of Income Tax (Earnings and Pensions) Act 2003; registration, self-certification and online filing
- April 2015, the income tax, corporation tax and NIC changes in relation to ERS and ERS options awarded to internationally mobile employees will take effect from April 2015

Stuart Bailey noted that the pace of reform is likely to ease in the next parliament, but there remain areas in which legislative incentives - combined with industry best practice - can speed progress in UK employee share ownership. Discussion points include: the introduction of automatic, or at least regular consideration of, share scheme limit increases; the fate of employee shareholder contracts; connecting share schemes with pension provision; and enabling more lower-paid, part-time and zero-hours employees to participate in employee share plans. The Centre will be convening roundtable discussions over the coming months in order to crystallise an industry lobbying agenda ahead of the next general election.

Centre staffer **Harry Atkinson** followed Stuart's presentation with an overview of the state of employee share ownership in the UK as shown by HMRC's latest annual statistical release. The latest figures highlighted the need for further action to be taken in support of all-employee share schemes, with the number of companies offering a SIP or SAYE plan declining for the fifth year in a row. Despite the disappointing results the statistics nonetheless highlighted the benefit that millions of employees receive from tax approved employee share schemes. The raising of SIP and SAYE investment limits, to be made effective in the 2014 Finance Act, will provide a welcome boost for all-employee share schemes and further incentivise take-up. The Centre's analysis of the HRMC statistics will be published in a forthcoming paper.

Paul Malin, a leading expert on reaching settlements with HMRC, combined his knowledge with Stephen Woodhouse's material to guide delegates through the complexities of extricating clients from employee benefit trusts (EBTs). A key message from the presentation was that HMRC practice with EBT settlements is still developing and may change further, especially in light of the ongoing legal battle with Murray Group Holdings ('the Rangers case'). Paul outlined HMRC's guidance relating to settlements - including Spotlight 5 and the FAQs released in September 2012 - before considering the corporation and inheritance tax regimes for EBTs.

Centre chairman **Malcolm Hurlston CBE** discussed how the European Union, among the multiple

domestic, foreign and international regulatory authorities with which Jersey practitioners must contend, is proving particularly troublesome with its proposal for a public register of trusts. The draft legislation, passed by the European Parliament as part of the third EU Money Laundering Directive, would mark a major intrusion into the private affairs and family life of common citizens. The proposal faces several hurdles, including passage through the European Council where the UK, one of the few common law countries in the EU, can push back against the measure. STEP is campaigning against the measure with the support of the Centre. Turning to the future prospects for employee share ownership in the EU, Malcolm alerted delegates to a new ally for share schemes in the form of Michel Barnier, Directorate General for Internal Market and Services and strong candidate to be the next president of the European Commission. He also drew attention to the Centre's involvement in a financial participation research project funded by the EU and led by the Italian Confederation of Workers' Trade Unions (see page five of January's *newspad* for further details) and, as a former Brussels lobbyist, explained the workings of the Commission, Parliament, Council and their trilogue.

Davinia Smith concluded the morning with a panel session exploring Jersey's future as a regulated jurisdiction. The overriding message from delegates was clear: Jersey has been at the forefront of compliance in the new world of global tax transparency but these efforts risk leaving it at a competitive disadvantage. This reflected the lower confidence of Jersey delegates compared with the 100 percent of Davos guests who expected 2014 to be better than the previous year. Rival jurisdictions, particularly beyond the British Isles, that are less active in their compliance efforts are using this to their advantage when pursuing clients. The rock to this hard place is that many companies, fearful of bad publicity in the current political and media environment, are backing away altogether from the high quality - and well-regulated - professional services offered by practitioners in Jersey.

The Centre expresses its sincere thanks to Davinia, Paul and Stuart for stepping up, and the scheduled speakers who, despite their best and repeated efforts, were unable to attend. A pilot webinar is planned for several of the absent speakers and will be made available for free to all conference delegates

ROME June 5 & 6

Two more top level confirmed new topic presentations - from Centre member firms **Ernst & Young** and **White & Case** – have almost completed the programme for the Centre's 26th annual employee equity plans conference, which takes place in central **Rome** on **Thursday June 5 and Friday June 6,** 2014. **Ceri Ross** from Ernst & Young will present the results of EY's oven-fresh 2014 global share plan survey, which includes a report from the German Share Plan Institute, while **Nicholas Greenacre** from White & Case will ask what can be done to restore plan promoters' confidence as the regulatory tide engulfs employee equity plans in Europe?

As more than 30 people have already registered for this key event, the Centre now holds only a handful of vacant rooms from its original block-booked hotel allocation. So now is the time for you to register.

Other speakers will represent: **Equiniti; Association of British Insurers; David Craddock Consultancy Services; Esop Centre; European Trade Union Confederation; The HR Partners; KPMG; Lewis Silkin LLP; Pearson Group; Pett, Franklin & Co. LLP, Strategic Remuneration** and **SunPower Corporation (US)** The Centre thanks lead Rome sponsor, **Equiniti**, which is helping to organise this event. *Equiniti provides award-winning executive, Sharesave & SIP plans and a wide variety of other employee benefits management services. It is the leading share plans administration provider for UK-listed companies and manages the second largest UK Flexible Benefits plan. Equiniti's clients vary in size, from 30 to more than 300,000 employees and span both FTSE 350 and overseas listed companies.*

The Centre offers a conference package, comprising:

- Entrance to all conference sessions
- Delegate pack with speech summaries
- Two nights' accommodation (on single occupancy basis) on **June 4 & 5** in the four-star **Residenza di Ripetta**, Via Ripetta.
- Breakfasts, lunches and refreshments during coffee breaks
- Invitation to cocktail party (partners welcome)

The hotel, a historic converted C17th convent, is part of the Royal Demeure Luxury Hotel Group and is located a stone's throw from Spanish Steps, the River Tiber and Rome's smartest shopping street, Via Corso. The hotel website is at: http://tinyurl.com/nc9ksdv.

Registration secures you a room in the conference hotel, as the Centre books rooms at group rate, to make things easy for all. The delegate package prices for this conference are:

Centre member:
Practitioners £1,135 Plan issuers £645
Non-member:
Practitioners £1,750 Plan issuers £725
No VAT is charged on these fees

Practitioner **speakers**, who are Centre members, will pay **£995**; plan issuer member **speakers** will pay **£645**. **Only two speaking slots remain. Apply now.**

If you wish to attend as a delegate, register asap

Small supplements are charged for two person room occupation, so bring your partner or VFR with you. Idem those who want to upgrade their rooms.

Room extensions over the weekend will be available at the same price (subject to supply and demand) as the Centre pays for your package.

This two-day event provides an ideal forum for updates on the latest legal, regulatory and market trends in the employee equity industry; doing business; discussing share plan strategies and

networking. For further info, visit our website at www.esopcentre.com/event/diary-date-rome-2014/.
Your Rome contact is Fred Hackworth: email fhackworth@hurlstons.com with a copy to esop@esopcentre.com

DAVOS: February 5 & 6, 2015
The Centre's16th Global Employee Equity Forum will take place at the Hotel Seehof in **Davos Dorf** on **Thursday February 5** and **Friday February 6** next year. Yes, after more than a dozen years, this pivotal Centre event is moving home – from the Steigenberger Belvedere Hotel to Four Star Hotel Seehof, which is located less than 100 metres from the Parsenne Funicular and ski lifts, in neighbouring Davos Dorf. The Belvedere lifted its room charges quite dramatically for this year's event and this convinced the Centre that our package prices would soon be no longer viable. The new package deal obtained from the Seehof will enable the Centre to reduce attendance fees next year, while maintaining the high standards of facilities and hospitality that members have come to expect from Davos. The smallest bedrooms we will offer at this event will be $25m^2$.

John Lewis style mutual runs into trouble
Private health company **Circle,** half-owned by clinicians through a British Virgin Islands (BVI) company, in a so-called 'John Lewis style' mutual structure, is in a blazing row with the Competition Commission over share ownership rules, according to the satirical magazine *Private Eye.* Circle protested against a draft Commission proposal which in future would prevent clinicians from owning shares in their business unless they paid the full market value for them, without any support, such as soft loans from the company. The main reason why Circle was registered in the BVI is that under its corporate laws, the medics would not have to pay for their shares. Furthermore, to prevent conflicts of interest, the Commission officials thought that clinicians should not be allowed to hold share stakes which were dependent upon any requirement that the clinicians refer business to hospitals owned by their employer company. The Commission became interested in the issue three years ago after Circle, backed by a hedge fund, complained that rival health care companies weren't allowing it to compete properly. Its final report is expected to be published later this month.

Employee Shareholder Status (ESS)
Interest in the government's controversial new share scheme – Employee Shareholder Status (ESS) – is picking up, said lawyers *Squire Sanders*: "We are seeing ESS used: in private equity investments, as an incentivisation route for management teams in place of traditional option routes and for structuring one-off equity arrangements for key individuals."
News that ESS was getting some takers first emerged at the Centre's recent Global Employee Equity Forum in Davos, where leading share schemes lawyer **David Pett** established via a show of hands that at least four of the service providers present said they had executed one ESS contract, or more, for clients. However, of the ESS scheme take-up cases which have surfaced so far, not one involves a broad-based share scheme for rank-and-file employees.
The Department for Business, Innovation & Skills (BIS) acknowledged that rights sacrificed under an employee shareholder agreement can be re-granted contractually. At the same time, implementation of ESS arrangements has thrown up some practical and legal issues to be addressed. Shares must be issued to individuals fully paid but the legislation expressly prohibits anything being given by the individual in consideration for the shares. This is a problem for companies which do not have sufficient distributable reserves to pay up the shares. The solution is to use share premium. However, the rules require careful navigation to avoid a technical Companies Act breach resulting in a loss of ESS and the associated tax reliefs. Another practical point is valuation of the shares.
"HMRC is prepared to agree a value for ESS shares in advance, and this opportunity is not to be missed. True to their word, HMRC have been turning round valuation requests with relative speed. Despite ongoing rumblings that the scheme is not proving popular enough and calls from Nick Clegg for ESS to be scrapped, use of and interest in the regime is picking up and we have seen an increase in attention being paid to the advantages it can offer. Whilst the future of ESS is uncertain, there remains an opportunity to take advantage of the tax benefits and incentivise employees. It may just be a useful mechanism to promote employee ownership after all," added *Squire Sanders.*
The Centre is considering a special award this year for the member firm which makes best all employee use of the scheme.

Centre lobbies EU Commission on Eso social responsibility
Jeroen Hooijer, head of the European Commission's corporate governance and social responsibility unit, has told Centre chairman **Malcolm Hurlston CBE** that he is most interested in the Centre's idea of using the Company Share Option Plan (CSOP) on a European scale.
Mr Hurlston and Mr Hooijer exchanged views, during an hour long meeting at the Commission's Brussels offices, about how best to spread employee share ownership throughout the 28 member states. Mr Hooijer's boss, Internal Markets Commissioner Michel Barnier, is a keen supporter of Eso and wants the Commission to adopt more supportive policies.
Mr Hurlston told Mr Hooijer that Centre member and Barcelona based GlobalSharePlans, (now part of the Solium Group) had undertaken to produce the research on the taxation of options within EU member states.
The chairman suggested that the Commission should

create and promote 'option lite' models, like the two UK tax approved options plans, CSOP and Enterprise Management Incentives (EMI) minus the tax breaks – and that they should feature in any EU model share plan that may be devised in future. "Giving employees a free opportunity to participate in employee share ownership by way of such options plans has got to be a good start," the chairman said.
Major corporations could help out too – by featuring more prominently in their corporate social responsibility reports news about their Eso plans, as well as in their annual reports, as the majority currently say little or nothing about Eso to the wider world, added Mr Hurlston.
Mr Hooijer said he was supportive of the new FTSE-calculated UK Employee Ownership Index, devised by Capital Strategies and supported by the Centre. A share performance index such as this – comparing Eso supporting companies with the rest - was a powerful tool, they agreed.
Centre international director **Fred Hackworth** told Mr Hooijer that the Centre was increasingly being asked by different wings of the European Commission to do more work on the social enterprise dimensions of employee share ownership. The 'John Lewis model' of employee ownership was an inspiration but not a model, and the Commission had to take on board the fact that the JL Partnership paid its annual employee bonuses in cash and not in shares.
Mr Hooijer said that a Shareholders' Rights Directive was being currently revised. This aimed at producing more robust reporting of executive remuneration, more transparency and more engagement by shareholders in company behaviour.
Mr Hurlston promised the Centre's strong support for the CG and CSR unit's work.

Bonuses 'death spiral' fear

Barclays chief executive Antony Jenkins said that he was forced to increase bonus payments to senior executives after hundreds of key staff left the investment bank in America and he feared a "death spiral" could grip the organisation. Revealing the reasons behind the controversial decision to increase bonuses by £200m in 2013 despite profits falling at Barclays, Mr Jenkins said that he had to act or the investment division would suffer.
As many as 700 staff left the American investment bank, with the attrition rate for resignations among senior directors almost doubling from five percent a year to almost ten percent after Barclays cut compensation in 2012.
Barclays will say it is handing out almost £32m in share awards to its top dozen executives, just weeks after igniting a fresh pay row by hiking its bonus pool despite a fall in profits. The share bonanza, disclosed in a stock exchange announcement, is about 20 percent lower than the sum paid out a year ago, which it hopes will appease investors angered by recent revelations about remuneration at the bank. The equivalent announcement last year sparked a separate row because it was made on the day of the Budget, which prompted some observers to accuse Barclays of attempting to conceal the news. That was an accusation denied by the bank, which said the timing of the disclosures was set a year in advance. The precise value of the share awards will be dependent on the exact number of shares distributed to the dozen executives, who also include Tushar Morzaria, Barclays' new finance director.
As for Mr Jenkins, he will receive roughly £3.8m in deferred awards from bonus schemes in earlier years, although he will not receive payments under the bank's long-term incentive plan.
Barclays revealed in its annual report that the number of staff paid above £1m has risen, from 428 last year to almost 500. About half are based in the US and a quarter in the UK. The number of people paid more than £5m had risen "by a few", according to industry estimates. Last year, Barclays announced it paid five people more than £5m, none of whom is based in the UK. It is thought that the number this year is still less than ten.
Describing the bonus increase as the "hardest decision" he had to take since becoming chief executive in 2012, Mr Jenkins said that he understood the widespread criticism the bank received but insisted it was "the right thing to do". He said the bonus increase would be a one-off and, if profits continued to decline, an increase would not be repeated.
"We were faced with a very difficult decision for me personally as chief executive and for the board because we are absolutely committed to driving the level of compensation down in the investment bank," Mr Jenkins told *The Telegraph*. If the bank had not acted, he argued, it would have ended up in "a situation where the business begins to contract. People are less attracted to come to you, both clients and employees," he said. "You get into something of a death spiral. Your brand deteriorates and you can move very quickly from being a first tier player to one in the second or third tier if you don't protect the franchise. I understand completely the sentiment from shareholders and broader society that it feels unreasonable, but if we are going to be a world-class investment bank then we have deal with the compensation structure as best we can."
Barclays faced criticism in February when it revealed that its bonus pool would rise from £2.2bn to £2.4bn even though profits fell across the group. Investment bank bonuses increased from £1.4bn to £1.6bn, with profits falling 37 percent.

Clawback

Regulated financial firms could be required to amend existing employment contracts so that bonus awards can be 'clawed back' from individuals in specified circumstances. The proposals, set out in a new consultation by the central bank, would apply to all financial services firms regulated by the **Prudential**

Regulation Authority (PRA) and could be applied retrospectively in some circumstances, according to Centre member **Pinsent Masons**. The proposal is a significant extension of the **Bank of England**'s existing powers to prevent the payment of bonuses that have not yet been awarded to individuals.

"This proposal would take pay governance into a new phase," said Matthew Findley, an expert in executive remuneration and share plans at Pinsent Masons. "It would be another step towards greater regulation of pay, albeit with an understandable risk management focus. Requiring employment contracts to be amended would present a number of issues, not least that it risks blurring the line between whether bonus arrangements are contractual or discretionary. Employees affected by the change may also be alarmed by the retrospective imposition of clawback, which is something companies have not legally been able to do to date without employee consent," he said.

The PRA's Remuneration Code already contains 'malus' provisions which prevent the payment of bonuses which have not yet become fully payable to the employee. The consultation proposes the addition of 'clawback' provisions that could be used where variable pay awards have already become payable, or 'vested' in the employee. The proposed rules would come into force on January 1 2015, and firms would be required to take "reasonable steps" to apply them to awards made before that date but which vest afterwards subject to a six-year time limit. Vested remuneration could be clawed back where there is reasonable evidence of employee misbehaviour or material error, or where the firm or a relevant business unit suffers material financial downturn or risk management failures, according to the consultation. Firms would be entitled to claw back bonuses not only from those employees directly responsible for poor performance or risk management failures, but also from indirectly accountable senior staff or those that could have been reasonably expected to be aware of the failure or misconduct but did not take adequate steps to identify, address, report or prevent it.

The proposals are not intended to replace the recommendations made by the **Parliamentary Commission on Banking Standards** (PCBS) in relation to pay and performance, and the PRA said that it would consult on taking those forward later this year. The PCBS, led by Treasury Select Committee chair Andrew Tyrie, recommended the creation of a new remuneration code for senior bankers, under which more remuneration would be deferred for much longer periods and paid in forms which favour long-term performance.

Employment law expert Christopher Mordue of Pinsent Masons said that the PRA's proposals were "more coherent in policy terms" than the European Commission's recent changes in relation to bankers' pay, which include a 'cap' on variable pay limiting it to 100 percent of salary in any given year, or 200 percent of salary with the agreement of shareholders. The UK Treasury is currently challenging the legality of the cap at the Court of Justice of the European Union (CJEU).

"The PRA's changes to the Remuneration Code are aimed at ensuring that bonuses are aligned with responsible long-term approaches and can be recovered in the event of malpractice or failures in risk management," Mordue said. "However, the effect of the bonus cap is that firms are having to move more out of the total remuneration package onto the fixed pay side of the equation and out of the scope of the sort of claw back provisions being proposed by the PRA today. The net effect is actually to reduce the amount of pay which is subject to claw back, or other performance and risk adjustments. While 'bonus bashing' remains a popular sport, the reality is that increasing the proportion of the remuneration package which is paid though bonuses creates more scope to make pay conditional on long-term performance and responsible practice, and the bonus cap serves to weaken rather than strengthen the regulation of variable pay."

He added that although it would be straightforward for firms to introduce the proposed new rule in relation to new pay awards, it would be far more difficult to introduce them retrospectively for existing but as yet unvested awards.

"If the terms of the bonus scheme don't allow for unilateral variation by the firm, any variation would have to be mutually agreed which will require some incentive to be given to the employee to obtain their consent for such a material change. It may be possible in the case of existing employees to make participation in future awards conditional on applying these rules to existing but unvested awards, but for former employees no such bargaining room will exist. Even though the obligation is to take 'reasonable steps' to achieve retrospective effect, there will be room for argument about what 'reasonable steps' actually involve and how far firms have to go to try to reopen the basis on which existing awards have been granted," he said.

The conditions in which vested remuneration would be clawed back under the proposals in the consultation paper are:

- There is reasonable evidence of employee misbehaviour or material error;
- The firm or the relevant business unit suffers a material downturn in its financial performance; or
- The firm or the relevant business unit suffers a material failure of risk management.

Consistent with the rules on malus, clawback should not be limited to employees directly culpable of malfeasance. For example, in cases involving a material failure of risk management or misconduct, firms should consider applying clawback to those employees who:

- Could have been reasonably expected to be aware of the failure or misconduct at the time but failed to

take adequate steps to promptly identify, assess, report, escalate or address it; or
- By virtue of their role or seniority could be deemed indirectly responsible or accountable for the failure or misconduct, including senior staff in charge of setting the firm's culture and strategy.

The proposed rules would come into force on January 1 2015 and clawback could be applied to awards made before that date but which vest after that date, subject to **a six year time limit** due to the statute of limitations for contracts. The proposed requirements are subject to two months consultation.

Tribunal: clawback tax relief victory for employee

A taxpayer has won his claim for tax relief over the repayment to his employer of part of his sign-on bonus, reported Centre member **Abbiss Cadres.** The taxpayer agreed a new employment contract with his existing employer whereby he received a sign-on bonus of £250,000 in return for his promise to remain with the employer for at least five years. Under the contract, he was liable to repay part of that sign on bonus if he gave early notice to terminate his employment in breach of the five-year commitment.

At the time of payment, the full amount was subject to PAYE tax and National Insurance Contributions. Additionally, the taxpayer reported the full amount as taxable income on his self-assessment tax return for the tax year in which the payment was made.

The taxpayer later gave notice early and became liable to repay £162,500 to his employer. However, HMRC denied any tax relief in relation to the repaid amount on the grounds that the full amount of £250,000 was earnings for the year in which it was received and that the fact that a portion of the bonus was repaid did not change that. It contended that the repayment could not be regarded as '*negative earnings'* (a concept which is provided for under UK tax law) or that a claim could be made for employment loss relief under another part of the legislation.

The Tribunal acknowledged that, were the HMRC view to prevail, the taxpayer would be considerably worse off than if he had not received the sign on bonus in the first place. However, it stated that it would be: "Quite wrong for us to arrive at a rogue decision simply because we might consider that the Appellant would be unfairly prejudiced by a correct decision that dismissed his Appeal." HMRC acknowledged that the result was "hard" but that its job was to apply the legislation as enacted.

The Tribunal agreed with HMRC that the sign on bonus was earnings and properly treated as such for the tax year in which it was received. However, it did accept the alternative contention by the taxpayer (that the repayment was a payment of negative earnings) and concluded that the negative earnings should be aggregated with the positive earnings (£140,000) received by the taxpayer in that same tax year. This resulted in nil earnings for the year in question. The Tribunal determined that the remaining amount of the repayment (£22,500) could be claimed under a different part of the legislation as '*employment loss relief*'. Although an appeal may be made, the decision is still a timely one as more and more UK companies, under pressure from shareholders, are inserting claw back provisions into their bonus and share plans, said Abbiss Cadres. Ref: Julian Martin v HMRC [2013] UKFTT 040 (TC)

RBS bonuses scandal

Royal Bank of Scotland (RBS) sparked fresh outrage for its "astonishing betrayal" to taxpayers after handing out £576m in bonuses despite slumping deeper into the **red** with annual losses of £8.2bn.

RBS was poised to release millions of pounds worth of shares to its top executive team through bonus schemes put in place by the loss-making bank over the last three years. The release of the shares award will put a fresh focus on the pay policies of the 81 percent taxpayer-owned bank – where losses since the financial crisis have now surpassed the £45bn of taxpayer money used to prop up the bank. RBS was about to publish its annual report which would provide more detail about its pay policies, including how many staff were paid over £1m. It has been reported that up to 80 staff – compared with 95 last year – will have been paid over £1m. As a result of the complexity of the bonus schemes and the changes to senior management, the value of the series of bonuses due to be released was difficult to calculate before the bank's announcement, as they were subject to performance conditions.

Deputy Prime Minister Nick Clegg warned the bank to show restraint on pay and bonuses. He said: "A loss-making bank that is basically on a life-support system because of the generosity of British taxpayers shouldn't be dishing out ever larger amounts of money in pay and bonuses. The overall amount has been coming down. It needs to continue to come down. They are entitled to pay their staff what they want when they are standing on their own two feet. At the moment they are not."

Chris Leslie, Labour's shadow Chief Secretary to the Treasury, said: "Taxpayers will be incredulous that such large bonuses continue to be paid out at a time when huge losses are being made. George Osborne should make clear now that he would reject any request from RBS later this year for approval to pay bonuses of more than 100 percent of salary."

The bank saw losses widen from £5.2bn in 2012 after setting aside £3.8bn in provisions for customer mis-selling compensation. It took a £4.8bn hit after setting up an internal bad bank. The bank's bonus pool is down 15 percent on 2012 when it handed out £679m.

The latest results mark the sixth, and largest, consecutive loss for the lender since it was rescued by taxpayers at the height of the financial crisis in 2008 following an era of reckless expansion under Fred '*the Shred*' Goodwin.

Ceo Ross McEwan said the losses were "sobering" and "huge" but defended the bank's bonus pool insisting that the lender must be "pragmatic" when it comes to pay in a bid to "keep people doing their jobs" in a highly competitive industry.

Trade union Unite said the bank's decision to pay out more than half a billion pounds represented an "astonishing betrayal" for taxpayers given the scale of the losses - RBS has lost more than £46bn in six years. McEwan outlined a new plan to make the bank "smaller, simpler and smarter" that will see it shrink from seven divisions to three. RBS did not confirm how many jobs will go as a result of reducing operations.

Oil and gas major **BP** more than tripled ceo Bob Dudley's pay last year, the firm's annual report showed, with cash and performance-related bonuses taking his total remuneration to $8.7m. The payout came as the ceo works to recalibrate BP following the 2010 Gulf of Mexico oil spill and to streamline the business, returning cash to shareholders. Dudley was awarded a cash bonus of $2.3m and shares worth $4.5m in 2013, the report showed, on top of his base salary of $1.8m. That $8.7m total compares with $2.6m in 2012. "BP has made strong progress over the past three years under Bob Dudley's leadership, particularly in areas such as safety, operations and building for the future through reserve replacement, and his remuneration reflects this," said a BP spokesman. The great majority of his potential pay is directly dependent on BP's performance in areas essential both to the delivery of the company's strategy and to the long-term interests of its shareholders."

Reward arms race claims scalp of Co-op Group boss

The top management team of the **Co-operative Group** faced calls to hand back controversial retention payments in an effort to repair its relationship with the seven million members of the troubled mutual. These payments were leaked and sparked the resignation of the chief executive, Euan Sutherland, who was in line for £3m worth of these retention payments over two years. Sutherland, who took the top job only 10 months ago, branded the group as "ungovernable" when he suddenly walked out, exposing the tensions at the top of the loss-making supermarkets and funeral homes group.

His temporary stand-in, Richard Pennycook, and at least six others of the remaining team assembled by Sutherland, are receiving the payments, which were put in place last July at the height of the problems in the Co-op Bank. The bank has now warned that it needs another £400m capital injection on top of last year's £1.5bn rescue package.

The call for the retention deals to be repaid was made by Peter Hunt, former secretary of the Co-operative Party who runs the pro-mutual think-tank Mutuo. "There is no place in a consumer owned co-operative business for unearned executive bonuses. How these came to be requested by management and then approved by the board must be explained. Equally, no member of the current executive will carry the confidence of the membership who does not immediately and publicly declare that they will not accept such payments," he said.

Sutherland's departure came after his efforts to overhaul the business had become "impossible" because of the Co-op's failure to change its governance. He said that he would not accept the huge retention and bonus payments previously agreed. He had been offered a guaranteed retention payment of £1.5m, unrelated to performance, on top of his base pay of £1.5m to bring his total reward package (including other benefits) to £3.25m. The other seven directors in the top team were offered pro-rata deals. Nobody was meant to know that the entire team was to be paid retention payments under Sutherland's plan; only the top three were to be publicised.

The Co-op's payoff for HR director, Rebecca Skitt, won the pay-off of the year trophy award. In February she was told she was to be 'exited' for reasons that did not amount to dismissal. **To minimise 'disruption' and to achieve a 'clean break' she was to be paid her 100 percent retention payment for both 2013 and 2014, even though she was not being retained.** This came with a third of her entitlement to the long-term incentive plan as a 'good leaver,' even though she no longer had to be incentivised in the long term. Her total pay-off was worth more than £2m, for 11 months' work.

Will Hutton, writing in *The Observer* before Sutherland's resignation, said: *"It must represent one of the greatest wealth grabs in history. British firms have been the object of a management coup to deliver extravagant executive pay. The argument is that this incentivises performance and drives companies forward. The evidence suggests the opposite. Performance, productivity and innovation across British business are touching new lows. Yet inequality, with all its pernicious side-effects, is at its highest level for a century. This is a bad deal for the economy and society alike. The virus has now infected the Co-op, owned by its members as a co-operative. Board documents seen by the* Observer *show how degraded our business culture has become. In a closet deal executives are being paid twice their salary for simply staying put – a retention payment – because over 2013 and 2014 any performance related incentive in this troubled organisation would not pay out.*

"The excuse is the Co-op has great challenges and the leadership need to be paid in the top quartile of executive pay, but all top jobs involve tough challenges. That is organisational life. The core challenge though is not stated, although some of the elements – removing the taint of scandal, reviving the membership model, redefining the social goals – are on the list. That challenge is to marry Co-op values with a new and better functioning business model.

What is astounding is that it occurred to nobody, not the executives themselves, that by being offered and accepting sums this large the management were trashing the very values they were on a mission to rebuild," added Hutton, former boss of the Industrial Society.

Referring to Skitt's pay-off, Hutton added: *"It is mind-boggling and this in an organisation that claims to pride itself on its ethical and co-operative values. She is in receipt of no more than an almighty bung, in a wider remuneration framework that has taken incentivisation to gothic levels of irrationality. The remuneration committee has but one reference point: 'alignment with the market.'"*

"Yet the market's operation with whopping, crude round numbers – a world of 100 and 200 percent bonuses of base pay – drives a coach and horses through any system that attempts to calibrate reward proportional to performance. Rather it is the arms race in pay I described in my Fair Pay Review for the government – a system in which everyone ratchets up their pay by attempting to be in the top quartile. If there is one organisation that you might expect to join, say, the John Lewis Partnership, in declaring independence from the arms race it is the Co-op. Instead it has set out to be a pace-setter.

"There is no need to pay directors as much as 130 times the average wage, or 250 times the pay at the bottom of the Co-op pay spine. Only 25 years ago the average multiple in British business was around 35 times, and plainly British business performance is not four times better now than it was then. I don't think we can run our country much longer along these lines. Yet very few businesses – and certainly not the Co-op – feel capable of breaking out. Nobody – and no shareholder under current ownership rules – wants to be a bottom quartile payer. And so the gravy train goes on. There are remedies. Organisations should annually publish the multiple of top to average pay, so everyone can see what is going on and ask tough questions when necessary. On top, if executives like Mr Sutherland want to be paid as capitalists, then they should put some of their base pay at risk to earn their bonus. The wider system needs root-and-branch reform, but for the Co-op the remedies are closer to hand. It is owned by a democracy of members elected to its area committees, regional boards and main board. The executive thinks this democracy is part of the problem, suffering from a fundamental disconnect. Now is the time for it to show its mettle."

Victory for HMRC in Eso type loan scheme

The Upper Tribunal has dismissed the taxpayer's appeal in *Aspect Capital Ltd v HMRC*, said Centre member **Deloitte**. This tribunal agreed with the earlier First-tier Tribunal hearing that an Employee Participation Scheme set up as an alternative for employees who were up to the limit on being awarded options under an approved share option scheme involved the making of loans to the employees, and that the debt arose immediately on the transfer of shares under the scheme. Thus assessments made under what was ICTA 1988 Section 419 (loans to participators) were upheld.

See http://deloi.tt/1bP3vm4

Irish 'Eat what you kill' bonuses demanded

Directors from AIB lobbied Finance Minister Michael Noonan seeking bonus-type incentives for its senior executives – just two weeks after he publicly rebuked the bank for asking for the lucrative 'top-up' payments, the Sunday Independent learned. Rather than straightforward cash bonuses, AIB appears to be looking at being able to offer deferred share options to executives.

The revelation comes just a week after AIB ceo David Duffy claimed in an interview that the bank did not request bonuses for senior staff. A delegation of the bank's heavyweights – including chairman David Hodgkinson, deputy chairman Michael Somers, former Tanaiste Dick Spring and director Jim O'Hara – met Noonan in the Department of Finance last month. Incentives for executives were on the agenda of items raised by AIB. "It was about the risk to the bank in terms of retention of staff. Their point is they need to be able to paint a brighter future in terms of remuneration. They just wanted to fully explain they weren't all about bonuses," a government source told the *Sunday Independent.* Mr Noonan again informed the bank's directors the Government was not changing its policy on pay. "There is no point in talking about incentives until they get everything ship shape," a government source said. The bank is believed to be looking at an incentive share option scheme, known in the industry as 'Eat-what-you-kill'**.** Executives would receive rewards of share options in the coming years, provided their initiatives generated profits. AIB has denied bringing up pay at the meeting. "No attempt was made to put any form of pay arrangement back on the table. AIB regards this matter as closed," said a bank spokesperson.

France's second largest listed bank, **Societe Generale**, said it will ask for shareholder approval to pay some staff bonuses worth up to double their salaries, in accordance with the European Union cap on bonuses. SocGen disclosed a €300m compensation pool in 2013 for management, traders and employees whose activities have a material impact on the risk profile of the bank. Ceo Frederic Oudea said last month the bonus pool would be down for 2013, after a €446m fine over attempted rigging of the Euribor benchmark rate wiped out investment banking profits in the quarter. From next year bankers' bonuses in the 28-country EU can be no higher than their salaries or twice that amount if a bank's shareholders give their approval.

Qatar's central bank is capping bonuses for board members of commercial banks in the country, it said in a circular to banks, in a rare move to influence

executive compensation. Since becoming emir last June, however, Shaikh Tamim bin Hamad Al Thani has taken a number of steps to spread the country's gas wealth more widely among all Qataris. He has vowed to crack down on corruption and business monopolies, while $880m worth of shares in a state petrochemical firm were sold at a discounted price to citizens. The maximum annual bonus for a chairman of the board of a bank has been set at 2m riyals, while the cap for a board member is 1.5m riyals. Bonuses can only be granted if a bank makes a net profit and five per cent of bank capital is distributed to investors, reported *Gulf Daily News*. No bonuses can be distributed without the central bank's approval.

Sri Lanka
Voting rights of ESOPs will have to go to the workers themselves from 2015 under new rules, a top capital market regulatory official said. SEC officer in charge Dhammika Perera said the regulator did not want to micro-manage ESOPs or say how shares should be allocated as long as the true beneficiaries were shareholders. "Any share option scheme should be in existence for the benefit of the employees," Perera told a forum of information technology companies that may be interested in listing their firms in Colombo. "By the end of 2015, the shares vested with share option schemes should be in the names of employees. The employees should have voting rights." The new rules followed complaints that some share ownership plans had undistributed shares for a long time and were seen as hidden tools to exercise control on the company by third parties, such as promoters of founders.

Oz
A group of government backbenchers is campaigning for the Abbott government to introduce a new employee share scheme to encourage start-up companies and potentially reduce workplace tensions.
Qantas will cut 5000 jobs, freeze wages of all staff, and sell or defer buying more than 50 aircraft in a bid to cut A$2bn in costs. Qantas employees were putting together a bid late last year to buy a share in the struggling airline. The airline said the roles to be lost include 1,500 management and non-operational roles, operational positions affected by fleet and network changes, and maintenance and catering roles lost as a result of the previously announced closure of the Avalon maintenance base and Adelaide catering centre.
Employees worried about a $300 million half-year loss have already held talks with private-equity investors in London and New York. Qantas pilot Ian Woods is spearheading the employee bailout and has also had preliminary talks in Canberra. "I am trying to put together a package that will keep Qantas alive and still in Australian hands," he said.
The flying kangaroo suffered its investment rating being downgraded to junk status a day after it announced it was axing 1,000 jobs. "There has never been a better time to look at the employees taking a share in the company," Capt Wood said.
Qantas boss Alan Joyce has been unsuccessfully lobbying the government for a bailout or the axing of the Qantas Sale Act, which caps foreign investment in the airline at 49 per cent.
But Capt Woods said if employees took a 25 percent share in the company it would secure Qantas in Australian hands and release 75 percent to 'investors with deep pockets.' That would open up a greater share of the company to foreign investors or airlines and allow it to compete with Virgin, which has just received a $350m injection from its partners.
"The government could make employee ownership a condition of lifting the 49 percent restriction on ownership," he said. "That would anchor it in Australian hands." Capt Woods said the $1.5bn bailout funding could come from either the government or foreign investors in the form of a loan to the employees' share trust. This would be repaid from business profits over time. Employees could trade benefits such as long service leave in return for a greater share in the company.
The airline has been dogged by poor relations between management and unions over the years. The employee bailout could help heal the rift, with employees having three representatives on the board of 12 directors. But Qantas chairman Leigh Clifford has refused employee offers to talk.
"Things might be a bit different now," said Capt Woods, who is acting independently but has the backing of several unions. This would give employees a voice and participation in the strategy of the company, because many are dismayed at the way it is going right now."
Alan Greig, director of Employee Ownership Australia and New Zealand, said worker buyouts had been proven to work in the US, with both Southwest and United Airlines. "It has been proven to enhance employee engagement, increase innovation and increase productivity. This model has been very effective in manufacturing and aviation overseas, specifically in the US," he said.

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