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it's our business

newspad of the Employee Share Ownership Centre

Centre cheers Budget CGT boost for share schemes

Chancellor George Osborne delivered a major capital gains tax (CGT) cut, which will boost employee share schemes, after taking on board sustained pre-Budget lobbying by the Centre.

In a surprise budget move, the chancellor slashed the rate of CGT from 28 to 20 percent for higher rate taxpayers and from 18 to 10 percent for basic rate taxpayers, as of April 6 this year.

"This will be great news for any employee holding shares in their employer company and, in particular, offers a further boost to the benefits of Save As You Earn (SAYE) and Company Share Option Plans (CSOP)," said Centre member Andrew Quayle of lawyers **Olswang.**

The widening of the gap between income tax and CGT rates may make the setting up of tax-advantaged share option schemes more attractive to companies on a cost-benefit analysis.

Those companies who use SAYE-Sharesave rather more often than the share purchase based Share Incentive Plan (SIP) will be well pleased by the news. So will those companies that still use CSOPs to incentivise staff, especially in lower paid jobs, such as in retailing.

Mr Osborne's budget was the first for a decade in which there were no major changes announced to the basic rules of the four main tax-advantaged employee share schemes – SAYE-Sharesave, SIP, CSOP and Enterprise Management Incentives (EMI). Arguably, share scheme legal and administration departments will be glad of a pause after more than two years of intense activity, largely brought about as a result of the implementation of share scheme improvements, as recommended by the **Office of Tax Simplification**.

The CGT collateral boost to approved schemes was exactly the type of initiative Centre chairman **Malcolm Hurlston CBE** had been looking for during the Centre's long struggle to save the CSOP from the scrap-heap.

Mr Hurlston said: "Many more employee shareholders are caught by CGT bills than you might think, despite the annual exemption. The CGT tax pain struck particularly hard last year when many five year SAYE option schemes matured, having been granted low and discounted option price levels fixed during the world financial crisis. Naturally, employee shareholders in some schemes made considerable gains – on the back of big share price rises – which, though free from income tax, were still liable to CGT.

"Going forward, the chancellor's CGT reductions could result in large tax savings for some employee shareholders since their maximum monthly savings limits are now much higher than they used to be – double in the case of SAYE-Sharesave. This should boost the take-up of the CSOP too, in which employees do not have to put cash up front in order to participate.

"The chancellor's CGT reductions will give both a practical and psychological boost to broad-based employee shareholding, as well as to executive equity schemes – and we welcome them."

The CGT bill for supermarket check-out staff who cash in their CSOP options when they mature will be much less than it was before the budget, assuming they pay basic rate income tax. Employees whose CSOP or SAYE options are maturing now should hang on until after April 6 before selling – in order to take advantage of the lowered CGT, if their gains are considerable.

From the Chairman

The Centre will return to the Reform Club for the 2016 Awards Dinner. Former club chairman, Mihir Bose, sports journalist and author, has kindly offered to host. A date will be agreed in the next fortnight, with the event following the Centre's inaugural British Isles event.

Other venues offer more places but there was consensus that the size and style of the Reform was a fit for the Centre's members.

Davos in London worked so well this year that it makes sense to schedule an annual major event in the capital celebrating the combined Esop strength of the mainland and the Crown dependencies.

Malcolm Hurlston CBE

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For example, a basic rate employee taxpayer who has made a profit of (say) £25,000 on a maturing SAYE-Sharesave plan will be more than £1,000 better off if CGT is paid after April 7 because the bill will fall from £2,502 to £1,390 – taking into account the annual CGT exemption of £11,100 in gains per person.

If, however, the same employee shareholder had made a gain of £50,000 on a maturing five year SAYE-Sharesave contract – as happened at BT last year - then the CGT bill will be more than £3,000 lower than before the new reduced rate applies.

Employee shareholders who have five-year SAYE-Sharesave savings contracts can now save £6,000 per annum (which multiplied by five equals £30,000) before their options mature. The 20 percent discount, at which these options are normally granted, adds a further £6,000 to this figure. So even a by no means spectacular 40 percent gain in the share price over the full five years would leave an employee shareholder who had saved the maximum £500 per month with a gain of £14,400 – well above the annual CGT exemption limit.

In addition, the CGT cuts may encourage employees to take more interest in non-tax-advantaged schemes which go to greater lengths to get into the CGT regime, such as growth share schemes and joint share ownership plans (JSOPs) but that may attract more HMRC scrutiny than hitherto.

Most unexpectedly, the chancellor placed a £100,000 lifetime cap on the amount of CGT tax relief that an employee can enjoy on shares acquired through the newly popular Employee Shareholder Status (ESS) scheme, under which an employee gives up certain statutory employment rights in exchange for an award of employer shares. The ESS regime provides generous tax reliefs for participating employees and, in particular, ESS shares have (until now) been free from CGT on all future growth in value.

Members reported at the Centre's recent Davos-in-London conference that the demand for ESS schemes was growing fast, but for the benefit of executives and not the rank-and-file.

"In effect, and when coupled with the falls in CGT rates, the maximum tax saving that can now be achieved by an employee through ESS is £20,000" said Mr Quayle. "This change will affect all ESS schemes installed after budget day (gains derived from ESS shares issued before then will not count towards the lifetime limit and will continue to enjoy the full benefit of the relief from CGT).

"Despite the change, we expect ESS to continue as a popular means through which companies incentivise their senior employees," he said. "Indeed, one of the main benefits of ESS (aside from the capital gains tax saving) is that HMRC offers a streamlined service through which companies can pre-agree the current market value of their shares for tax purposes before they are awarded to employees. Given the removal of the 'post transaction valuation check' from March 31, this benefit will become even more important."

However, informed critics said that the chancellor had shot his own fox with ESS in the budget. Mr Hurlston said: "I understand from major players that the recent popularity of ESS has all been in the executive and key staff tax relief areas, but now this looks much less attractive. The ESS has never seemed worthwhile at lower levels."

Mr Quayle added: "Where employees are given a free choice by their employer company to receive shares through ESS or outside the scope of ESS (which is commonly the case), we do anticipate that the new cap will discourage some employees from taking advantage of ESS. The more limited tax benefits associated with ESS may simply not be sufficient compensation for the forgoing of statutory employment rights."

*HMRC announced that a rights issue which takes place on or after April 6 2016, concerning shares received on exercise of an **EMI** option will be treated in the same way for share identification purposes as other rights issues.

Bookings increase for VIENNA: June 1–3

Around 25 members have already booked their places for the Centre's 28th annual European conference, being held this year in the five-star Steigenberger Herrenhof Hotel**,** in central **Vienna,** on **Wednesday-Friday, June 1 to 3**.

A number of delegate places are available for trainees or junior staff from the employee equity teams of practitioner member firms at a special price of **£875**.

Attendance will qualify you for 11 hours CPD credits under the Law Society scheme.

The Vienna conference package comprises:

- two nights (June 1 & 2) half-board accommodation in the Herrenhof.
- entry to all conference sessions
- invitation to the conference cocktail party on Thursday evening (partners welcome)
- lunch and coffee/tea break refreshments
- bound delegate handbook.

In addition, the same offer is open to more senior practitioners from member firms who have not attended a Centre international conference recently.

If two member practitioners from the same company register as delegates, their package fees are reduced to **£750 each**.

To take advantage of these offers you will need to register on or before **April 12.**

The non-member practitioner rate remains unchanged at £1,750.

Only one speaker slot remains to be allocated as topic presentation proposals have poured in during recent weeks. Our programme now boasts 14 high-quality topic slots. Practitioner (service provider) speakers pay only **£825** for the same package. Speakers representing plan issuer companies pay just **£525**. No VAT is charged on these fees, as the event takes place outside the UK.

Delegates may find themselves rubbing shoulders with the Austrian national soccer squad who will be staying in the Herrenhof, at the same time as the Centre conference, prior to flying to France to take part in the Euro 2016 finals.

Fred Hackworth, the Centre's international director, said: "These reduced Vienna attendance fees offer a good deal for members indeed, especially when you consider that the package costs the Centre almost £500 per person. We have a first-class programme and you should not miss the opportunity to participate in the open sessions, network with leading figures in the industry and enjoy the ambiance of the Hapsburg empire. To avoid disappointment, as the Centre holds a limited allocation of rooms for delegates in the hotel, you should register asap."

The programme features presentations from Austrian and German companies, as well as from the UK and the US, such as **Willis Towers Watson**, **Pett Franklin**, **Solium**, **Strategic Remuneration**, **SunPower Corporation**, **Tapestry Compliance**, **Voestalpine**, **White & Case**, **Lewis Silkin** and **ButcherJoseph**, the US Esop investment bank. **Mark Higgins** of **Vodafone** and **Robert Head**, former share schemes director at **Pearson,** and **Claudia Yanez** of **SunPower**, will lead an employee plan issuers panel which will discuss plan launch and operational issues with advisers. **Patrick Jones** of **Appleby** and **Claire Drummond** of **Bedell Group** will lead the trustee issues panel session. In addition, **Dr Barbara Kolm,** director of the **Austrian Economics Center,** will moderate a panel discussion on employee share ownership in Austria and Germany.

Three major case studies are in place:

- *Maintaining employee ownership at a time of growth,* which features the global development company, **Development Alternatives Inc**. **DAI** which aims to maintain its employee-owned status while positioning itself for international expansion. Highlights include corporate restructuring considerations with a worldwide workforce of 2,700, designing management incentives and improvements to its balance sheet. DAI was founded by three graduates of Harvard University's Kennedy School of Management. It works not only in water and natural resource management but also in crisis mitigation and financial services. This double-header will be delivered by Keith Butcher, managing partner, ButcherJoseph & Co., assisted by DAI's ceo, Dr Jim Boomgard and company secretary Helle Weeke.
- *How* **SunPower**, a California-based energy company, *which employs 6,300 people worldwide, introduced new performance-based executive equity rewards.* Claudia Yanez explains how SunPower operates its broad-based and executive equity incentives.
- *Bundled employee shareholder rights at* **Voestalpine**, an Austrian steel company. More than 24,000 employee shareholders are involved in a structure which gives them voting rights in a collective voice through a foundation. Max Stelzer, a member of the executive board which administers the company's Eso foundation, will explain how this works in practice.

An informal delegates' dinner will be held in Vienna on **Wednesday June 1**, the night before the conference opens.

Sponsorship opportunities offered to Centre members include whole event sponsorship (£3,250), with full branding rights and free seats – and separate partial sponsorship offers – for the conference cocktail party (£1,000) and our Vienna e-brochure logo (£550), with repeat mentions in both *newspad* and on the Centre website until August in all instances.

If you plan to sponsor, speak or attend, please email Fred Hackworth at fhackworth@esopcentre.com with copy to esop@esopcentre.com.

The 100-year old Herrenhof is situated in **Herrengasse**, near the Kohlmarkt and Golden Quarter in the city centre – a few minutes walk away from historic landmarks, such as the Hofburg Imperial Palace, Café Central, the Spanish Riding School, the Sisi Museum, the state opera house, Burgtheater (Imperial Court Theatre) and gothic St Stephen's Cathedral.

Last chance to book for Jersey 2016: Friday April 15

In just two weeks' time, the Esop Centre and the Jersey branch of the Society of Trust and Estate Practitioners (STEP) will be hosting this year's share schemes and trustees conference at the Royal Yacht Hotel in St Helier.

This year's programme features a mixture of talks and panels from expert practitioners based in the UK and the Channel Islands.

Delegates will hear presentations on joint share ownership plans, the employee shareholder status (recently capped by George Osborne), the reporting of ownership information and share valuations.

Speakers include David Pett of **Pett Franklin**, Graham Muir of **Nabarro**, Paul Malin of **Haines Watts**, and David Craddock of **David Craddock Consultancy Services**.

The **new EOT panel** will ask why some firms are willing to act as EOT trustees and others not, and will feature Sara Cohen and Ann Tyler of **Lewis Silkin** and David Pett, a leading member of the Centre's new **EOT Group**.

This year's **trustee panel,** comprising Helen Hatton of **Sator** and Tania Bearryman of **Elian**, will focus on how practitioners should approach aggressive and legacy schemes. The half-day conference will be followed by a networking buffet lunch.

The full provisional timetable is now available on the Esop Centre website.

The delegate fee for Centre and STEP members is **£325**, non-members **£450**.

All delegates will be eligible for 3.5 hours CPD credit from the Law Society.

Book by Wednesday April 6 to avoid disappointment. Email Daniel Helen at esop@esopcentre.com or call 020 7239 4971.

News of key meetings

The Centre has held constructive meetings with the Financial Reporting Council (with members of the EOT Group) and HMRC. Responding to a letter from Treasury minister David Gauke the chairman of the Centre praised the valuation work of HMRC. "It must be rare for a minister to take up cudgels on behalf of a government service universally recognised as excellent" he wrote.

Retailer's employee pension fund at risk

BHS (British Home Stores) is the latest major company to warn that its employee pension fund deficit – the difference between what it must pay out to retirees and its assets – had ballooned into the danger zone. The beleaguered retailer's proposed Company Voluntary Arrangement (CVA), although approved by creditors, revealed that the black hole in its pension fund stood at £571m on a buy-out basis. The figure has ballooned by nearly £120m since the last triennial valuation in 2012.

BHS is in talks with the state-controlled **Pension Protection Fund (PPF)** over transferring 20,000 BHS pensioners into the rescue agency. The company is talking to the Pensions Regulator and the BHS pension trustees as well. The *Financial Times* reported that officials were asking Sir Philip Green – who sold the retailer last year for £1 – to contribute to the BHS heavily-indebted defined benefit pension scheme. Meanwhile, hundreds of current and former BHS employees were about to be told that their pensions would be cut by at least ten percent, on the assumption that their pensions would soon be in the hands of the PPF. BHS insisted that it continues to meet its pension payment obligations, but in its CVA submission, the retailer's directors were clearly hoping that the two schemes would be transferred into the PPF and that the company would have no further liability to fund them.

BHS is not alone in facing a pension fund deficit – **BAE Systems**, **BP, BT, IAG** (BA + Iberia) and **Royal Dutch Shell,** share the problem. But while most big companies can ride out pension fund deficits – because the annual number of retirees does not substantially reduce the capital remaining in the fund – this is not the case with companies suffering trading difficulties – like BHS.

The Centre has warned for years that the disappearance of final salary pension schemes was merely the first step on a road towards the gradual reduction of contributory schemes to a new base level of statutory minimum provision. This trend brings long -term employee shareholdings – as a savings mechanism – into ever sharper focus.

Alarmed by the growing crisis, some in the share schemes industry are urging the government to improve current tax structures in such a way that employee shareholders can more easily transfer their holdings into ersatz pension funds, perhaps – later on – with flexibility to create more diversified portfolios of long-term shareholdings. This, to some extent, is what Chancellor George Osborne is now doing. The Centre has adopted the ideas put forward by Alan Judes and supported by Towers Watson and others.

The pensions regulator's annual report said that the £44bn worth of extra contributions by employers between 2011 and 2014 had been equivalent to a rain shower on a dried up reservoir, filling only a fraction of the overall shortfall on final salary based pensions, up from £215bn to a record ***£375bn***, which is why almost no large UK companies now offer them to new employees.

Although the state-run **PPF** stands guarantor for those whose occupational pension fund is declared insolvent, it is unclear what would happen if several major companies collapsed at the same time, leaving tens of thousands of employees at the mercy of the PPF. Compensation – financed by industry levy – is almost always less than what the original pension scheme offered to employees.

UK ceos 'wildly over-paid' claim

Britain's chief executives are wildly overpaid and there would be no negative impact on the economy if their salaries were slashed, according to a study of top UK headhunters carried out by the **London School of Economics**. The report followed a separate analysis of FTSE 100 company accounts, showing that the average reward of a top ceo is now £4.6m a year.

The LSE interviewed the ten top international recruitment firms, who are behind 70–90 percent of ceo appointments. They found a consensus that reward levels for the most senior executives are "absurdly high". Head-hunters claimed that, for every ceo appointment, another 100 people could have filled the role just as ably, and that many chosen for top jobs were "mediocre". The market for executive jobs, however, has become so distorted that it would amount to career suicide for a ceo to indicate that he or she would be willing to work for less, they said.

The authors wrote: "If one were to offer to do the job for less, would that tip the decision in his or her favour? All the head-hunters agreed that this would be a poor strategy. Indeed, it might be that asking for a larger remuneration would have a positive effect in securing the appointment." They added: "There was almost universal agreement among the search firms that levels of remuneration for ceos in large UK non-financial firms was absurdly high. All the interviews supported the notion of an arbitrary norm for pay, which almost all firms felt was grossly and inappropriately high … The general view of search firms is that a lower norm would not materially affect what happens." One head-hunter said: "I think there are an awful lot of FTSE 100 ceos who are pretty mediocre." Another added: "I think that the wage drift over the past ten years, or the salary drift, has been inexcusable, incomprehensible, and it is very serious for the social fabric of the country."

The findings were being made public just as a report by the left-leaning **High Pay Centre** showed that the average annual reward of a UK ceo – including pensions, share options and bonuses – stands at about £4.6m. The think-tank analysed the remuneration reports of the 32 FTSE 100 firms to have filed accounts for 2015.

Max Steuer, reader emeritus at the LSE and author of the new research paper, *Headhunter Methods for CEO Selection*, published in the *Journal of General Management*, said there was little evidence that lower pay would see a 'brain drain', as had been suggested. "In Denmark and other continental countries, the ceos don't get this high pay but they don't seem to leave. The idea that if their pay were lower, British executives could show up in New York and say 'we would like to have your jobs', is a little implausible. I think the best way of thinking about it is that performance plays very little role in the selection process. Contrary to people saying these ceos are 'unusually able', we don't find any evidence of that. I am a great defender of capitalism and the market and what worries me about all this is that it threatens to erode the market," added Mr Steuer.

Stefan Stern, director of the High Pay Centre, said there was a systemic problem in executive pay, which may be resolved through greater involvement of employee representatives in the remuneration process: "Having employee representatives involved in this process could help. Some top bosses, it seems, are keen to manage all their costs – except the cost of employing themselves."

Are executive equity incentives worthwhile?

Business leaders should be intrinsically motivated to care about their results, and variable, performance-based pay ends up substituting that motivation—poorly—with external incentives, so **London Business School** professors Dan Cable and Freek Vermeulen argue in an article published in the *Harvard Business Review*. Research shows internal motivation—doing something for the sense of satisfaction and accomplishment—is critical to creativity and innovation, and it's undermined by tangible rewards. Incentives work best when trying to coax more out of employees doing mundane or routine tasks; for creative work, they can have the opposite effect.

Cable and Vermeulen push back against the conventional wisdom – that ceos should be rewarded when their companies flourish—for example, through stock options, which are meant to align the incentives of executives with that of shareholders.

However, tying so much ceo pay to performance incentives increases the temptation to fudge the numbers, and any metric a company uses—be it share price, earnings or margins—usually can't accurately capture one executive's contribution, they said.

They cite the views of **Deutsche Bank**'s new co-ceo, John Cryan, who has said he's mystified by the idea of performance pay. "I have no idea why I was offered a contract with a bonus in it because I promise you I will not work any harder or any less hard in any year, in any day because someone is going to pay me more or less," Cryan said at a Frankfurt conference, according to Bloomberg. Cryan is backing up his words: In January Deutsche Bank said it was scrapping bonuses for its executive board and cutting incentive pay across the company. In the event, Deutsche Bank slashed its bonus pool by 17 percent, though it still paid out €2.4bn after registering an historic loss of €6.8bn last year.

Axe LTIPs, urges City grandee

City grandee Sir Gerry Grimstone, chairman of **Standard Life** and deputy chairman of **Barclays** called for the end of complicated bonus packages, in favour of paying executives in shares which they would hold for a decade. The veteran director is a highly influential figure in the financial world and Barclays is under intense scrutiny as a high-paying bank. "*Remuneration has got far, far too complicated in financial services – you need to be a maths graduate to work your way through an LTIP (long-term incentive plan) to work out what someone is going to be paid,*" Sir Gerry said. "*That is not just for the commentators, it is for the people themselves to know what they are going to be paid.*"

Despite Grimstone's comments, Barclays ceo Jes Staley will receive the shares awarded to him to replace those which had been granted to him by a previous employer, **JP Morgan**, but which were lost when he took the Barclays job. When they were awarded on December 1 they were worth £1.9m. Former ceo Antony Jenkins, who left last year, will receive a payout as part of his LTIPs, first awarded in 2012.

"I am very much in favour of us moving to a system where a large part of variable remuneration is shares in the organisation which you hold for five years or 10 years," said Sir Gerry. He said this would align bosses' incentives with investors' interests: "Once you start doing that does the management's time horizon start to change."

LTIPs at Barclays are typically schemes which run for three years and the shares paid out have to be held for another two years. The bank is in the process of extending pay deferral for executive directors to seven years. If a regulatory investigation is underway, the shares can be clawed back up to 10 years later. LTIPs at the bank can be complicated. The award for 2015 for Mr Jenkins, who was fired part-way through the year, was measured against a series of targets. Half of the award was based on return on risk-weighted assets, 30 percent was tested against the loan loss rate, and 20 percent was measures on a balanced scorecard. This scorecard was based on five separate measures revolving around the bank's conduct, its employee's engagement scores, customer satisfaction and other targets. That comes on top of his salary, pension, fixed role-based pay allowance, and annual bonus – which itself is based on a mix of financial targets, the balanced scorecard and a set of personal objectives Jenkins had set for himself.

Sir Gerry does not sit on Barclays bank's remuneration committee, but he told the *Sunday Telegraph* "the direction of travel at places like Standard Life, where we have some influence in this area, is for a much greater simplification on remuneration. There is a whole group of City institutions who favour that. It has got far too complicated and people just don't understand it," he added.

State-owned **Royal Bank of Scotland** (RBS) chairman said his firm doesn't pursue highly paid investment bankers anymore, as it cut the number of million-euro earners and its bonus pool amid the continued shrinking of its securities unit. "We are not seeking to recruit M&A rainmakers in the City, we don't do that kind of business any more," Sir Howard Davies said when asked about pay. "On the other hand we don't want to be in a position where we take a hair-shirt approach and can't staff the bank with good people to do the job", he said. The number of RBS employees earning more than €1m fell to 121 last year from 131 in 2014, while the bonus pool was cut 11 percent to £373m, according to its annual report. The taxpayer bailed-out bank – which recently reported its eighth consecutive year of annual losses – handed its top management team *future* bonuses in shares worth £17.4m, despite posting an annual net loss of £1.98bn last year, driven by £3.6bn of write-downs and charges in the fourth quarter. Total losses have risen to more than ***£50bn*** since its 2008 bailout when taxpayers pumped £45bn into the bank. One employee earned more than €6m last year and another more than €5m, the report shows. The latter may have been McEwan, who was paid about £3.8m in 2015, equivalent to €5.1m as of December 31. That was more than double his 2014 compensation, and compares with an average salary of £37,000 at the lender. The bank, 73 percent owned by the taxpayer, released bonuses already earned – worth more than £5m – to the top management team, including ceo Ross McEwan, who took the helm in October 2013. McEwan, who was promoted from running the retail arm of RBS to replace Stephen Hester, has attempted to defuse rows over pay by ending the practice of handing annual bonuses to his top management team. Even so, members of the team are still receiving bonuses handed out in previous years and being awarded shares through three-year performance plans. The £17.4m of shares awarded to McEwan and his 10-strong management team are based on performance over three years and will not be released until 2020 and 2021, when the executives will find out if they are paid in full. McEwan, who was paid £3.8m in 2015, was handed shares worth £2.6m as part of this long-term share plan.

"While the bonus pool has been coming down year on year, including a further reduction in 2015, it is important that RBS does not become too disconnected from industry norms," Sandy Crombie, chairman of the remuneration committee, said in the bank's annual report. "The committee recognises the need to maintain a commercial approach to pay and reward the hard work by those employees who are helping to turn around RBS." Executive directors, including McEwan, aren't eligible for annual bonuses. The ceo will give away about £500,000 of his pay to charity. More than 90 percent of the bonus pool will be directed to those "below the most senior RBS employees", the bank said. About half of employees that receive such an award will get £2000 or less and a further 21 percent less than £5000.

RBS's shrinking number of millionaire earners contrasts with **Lloyds Banking Group**, which created 17 more, up to 66 last year from 49 in 2014, according to its pay report. However, Lloyds's bonus pool shrank four percent and ceo Antonio Horta-Osorio's pay fell 24 percent to £8.8m.

The **Prudential Regulation Authority (PRA)** and **Financial Conduct Authority (FCA)** notified the **European Banking Authority (EBA)** that the regulators would comply with all aspects of the EBA Guidelines on Sound Remuneration Policies – with one exception. This is the provision that the limit on awarding variable remuneration to 100 percent of fixed remuneration, or 200 percent with shareholder approval (the bonus cap), must be applied to all firms subject to the Capital Requirements Directive (CRD).

The **Israeli** parliament, the **Knesset,** is debating a plan to force the nation's banks and insurance companies to pay their ceos a maximum 35 times more than the lowest paid worker in the same business. Senior executive pay fixed above that ratio would not be recognised as tax-deductible and hence their annual reward would be taxed twice.

COMPANIES

Trustees of the **British Polythene Industries** Employee Share Ownership Trust (ESOT) acquired 60,000 ords of 25p each in the company – for use under the company's share matching plan – at a price of £7.10 per share. The shares acquired represent 0.22 percent of the company's equity capital. On March 4 2016, 498,144 shares, which had been held in the British Polythene Industries ESOT, vested in favour of employees under the plan. Following these transactions, the ESOT is beneficial owner of 250,360 shares representing 0.91 percent of the total voting rights and share capital of the company. The ESOT is the registered owner of a further 62,887 shares as nominee for participants in the share matching plan, representing 0.23 percent of the total voting rights and share capital of the company. This info was posted by Hilary Kane, company secretary & legal counsel 01475 501055

Cap Gemini confirmed its commitment to manage share dilution by approving a multi-year share buyback programme of €600m to offset the dilution from its employee share ownership programme and incentive instruments. The Group said a decision had been taken to allocate €150m to the share buyback in 2016.

Halliburton will curb its employee retirement benefits and curtail executive bonuses, the oil service giant told employees in an email. The Houston based company, which still employs 65,000 across the globe, said the measures would help it avoid additional layoffs. Halliburton has shrunk by about 30 percent or nearly 27,000 employees from its 2014 peak. "We're doing all that we can to preserve jobs," said president Jeff Miller. "Tough decisions have been made recently and since we've started this downturn." Halliburton said it would reduce its contribution programme to 401(k) plans. The company will still fully match the first four percent of an employee's contribution and half of the next two percent. *It will eliminate an additional four percent contribution that it had been making at the end of each year*. Halliburton said its managers would face other cuts. Base salary cuts for executives and senior managers made in 2015 will continue into 2016, and bonus opportunities for managers have been cut sharply or eliminated, the company told employees. Miller refused to offer specific figures on how the reductions will affect the company's bottom line, or details on the executive bonuses cuts. Halliburton reported a $28m loss in the three-month period ending December 31 due to impairment charges from asset write-offs and severance pay for laid-off staff.

Almost 2,000 cashiers and other branch staff shared stock options collectively worth £10m when **Metro Bank** went public on March 9. The £1.6bn float triggered share options worth an average of £5,000 for each employee that paid out as soon as the company's shares started trading. The new stock rose sharply in the market, making their options/shares even more valuable. Those who had been at the bank for several years got payouts of tens of thousands of pounds, while recent arrivals received smaller sums. Staff can expect further windfalls over the coming years depending on length of service and whether Metro Bank's share price keeps rising. Senior executives have another £20m of B-shares, which they can also profit from now that the bank has gone public. The challenger bank raised £400m in a private fundraising round with institutional investors. The payday is part of the bank's system of rewarding staff with shares, designed to give workers a long-term stake in the success of the company. Chairman and founder Vernon Hill said the options motivated employees. *"We really believe in share options. Here is why I believe in them so much: the amount of options we reward each person each year depends on their performance, but the value of the options over a long period of time depends on the performance of the bank as a whole," he said. "It forces this idea that you've got to get all the parts to work together to create value. That has been a powerful message from me my whole business career."* Mr Hill owns almost six percent of the bank and his shareholding was worth £105m as this edition went to press. Other big investors include Wellington Funds with more than nine percent of the equity and Fidelity Funds.

Morrisons' ceo Dalton Philips nearly doubled his remuneration to £2.1m in the year before he was sacked, while **Tesco** boss Dave Lewis received £4.1m – nearly three times the amount paid to his predecessor. The figures reported in company accounts – as required under the 2013 guidelines, to make pay comparisons easier – could even understate the level of pay given the unpredictability of bonuses.

Twitter is offering payouts between $50,000 and $200,000 to keep its job-shopping employees from jumping ship, according to the *Wall Street Journal*. The bonuses are being offered in the form of restricted stock to retain employees for six months to a year, according to the report.

On the move

Centre member **ButcherJoseph** was exclusive financial adviser to ADG Acquisition Holdings, Inc. in the structuring and funding of the Advanced Diagnostic Group ESOP. ADG is a leading provider of MRI and X-ray as well as all other imaging services throughout

Florida. Kevin Johnson, ceo of ADG, said: “After educating ourselves on employee ownership, we determined that this structure would best position ADG for future success. We are proud to reward our loyal employees by providing them the opportunity to share in the growth of our company. ButcherJoseph worked tirelessly to create the best possible outcome for our shareholders and employees, and their advice and efforts were critical in implementing this structure.” ButcherJoseph managing partner Keith Butcher commented, “We were honoured to partner with Kevin Johnson, the management and employees in ADG’s transition to employee ownership. ADG is a great, well-run organisation that is positioned for tremendous continued success.” Advanced Diagnostic Group is a leading provider of MRI and X-ray as well as all other imaging services. ButcherJoseph & Co. is an investment bank headquartered in St Louis with coverage in Chicago, Washington, DC, and Charlotte, NC. It provides investment banking advisory services to middle market companies. With more than $7bn in successfully completed ESOP transactions, ButcherJoseph & Co. is known as an ESOP leader.

Centre friend **Ann Tyler**, who played a key role in helping to unravel the **Roadchef** ESOT scandal, has accepted an invitation to sit on the Centre-STEP Jersey conference trustees' panel later this month (*see news story).* Alongside Ann on the panel will be Sara Cohen of Lewis Silkin, with whom Ann works as an employee ownership consultant.

Application of the Market Abuse Regulation nears

The EU Market Abuse Regulation (MAR) comes into effect from July 3 this year, requiring adaptation of the UK market abuse regime. While the current UK market abuse regime is broadly similar to what is outlined in MAR, there will be changes to the FCA Handbook, the Disclosure and Transparency Rules, the Financial Services and Markets Act (FSMA) and the AIM Rules for companies. There are two primary elements of MAR that could impact small and mid-size quoted companies:

Obligation to keep insider lists: Firms will be required to keep detailed insider lists from the date of entry into force of MAR. There are exemptions for producing insider lists foreseen in MAR for companies on ‘SME Growth Markets’; however, since MAR is introduced before MiFID II (which defines these markets) comes into force, companies on growth markets such as AIM will be required to produce full insider lists. This means that SME quoted companies on growth markets will have to put in place systems for insider lists and be subject to rules that require the same level of information for larger companies with different resources.

Prohibition on dealings: MAR prohibits persons discharging managerial responsibilities (PDMR) from trading during a closed period before the announcement of an interim financial report or a year-end report. Many companies traded on the UK main market and AIM routinely issue preliminary announcements of annual results that contain insider information. MAR rules could be effectively creating two closed periods (one running prior to publication of the prelims and one running prior to the publication of the results), which is likely to restrict the market’s ability to function properly and overburden business.

The *Quoted Companies Alliance* (QCA) said: “We have flagged these concerns with the FCA, the European Commission and HM Treasury, as well as highlighting them in our recent responses to the FCA consultation on its policy proposals and handbook changes related to the implementation of MAR and to the European Commission consultation on the EU Regulatory Framework for Financial Services. We will continue to emphasise these implementation issues in our upcoming response to the FCA’s consultation on delaying disclosure of inside information by issuers with securities admitted to trading on a regulated market (CP15/38), said the QCA. We are working to ensure that the transition to this new market abuse regime works well and does not add additional administrative burdens or disproportionate requirements for small and mid-size quoted companies. At the moment there is still uncertainty regarding the technical aspects of the issues mentioned above since these policy proposals are still subject to the publication of the European Commission’s forthcoming delegated Acts and regulations on MAR.”

Clarity and incentives for financial advice

The FCA has returned financial education for employees to the spotlight in its final report, co-authored with the Treasury, Financial Advice Market Review. The report sees the opportunity in the workplace but notes that regulatory liability makes some employers wary. The aim will be to give employers clarity and incentives to engage.

In a letter to acting ceo of the FCA, Tracey McDermott, the Centre has welcomed the gist of the report while pointing out the missed opportunity through employee share schemes. Centre chairman Malcolm Hurlston CBE first launched robo advice for debtors through the Foundation for Credit Counselling ten years ago. Similar effective interventions are belatedly needed elsewhere in financial advice and nowhere more obviously than through share schemes.

This month the Centre held a members’ breakfast to popularise the idea that linking share schemes with broader saving offers many employees the chance of becoming millionaires twice over.

Supreme Court judgments on Deutsche Bank/UBS

HMRC finally won in the Supreme Court the UBS/ Deutsche Bank cases relating to the tax avoidance schemes used in 2003 to structure bankers’ bonuses by way of the acquisition of supposedly forfeitable shares in special-purpose companies (SPVs).

The revenue consequences for HM Treasury should be significant, as many other banks established similar tax avoidance structures at that time (the clear wording of the legislation having been amended in 2004 to prevent such abuse). HMRC will 'breathe a sigh of relief' as the ruling allows challenge to many other tax avoidance schemes based on the use of 'restricted securities' in SPVs with restrictions having no commercial purpose other than to avoid tax.

The Supreme Court held that the special arrangements adopted by Deutsche Bank and UBS to pay cash bonuses in the form of restricted securities did not succeed in bringing the payments into Chapter 2 of Part 7 of ITEPA (which taxes restricted securities), said Centre member **Deloitte.** The case concerned bonus arrangements entered into by the banks. Money was subscribed into a special purpose company in each case and the shares, subject to restrictions, were given to employees. The restrictions were intended to ensure that there was no immediate income tax, but they dropped away shortly afterwards. Employees cashed in shares either immediately or two years later if they wanted to qualify for a ten percent capital gains tax rate.

The Supreme Court held that the restrictions should be ignored, and a *Ramsay* analysis applied. Once the restriction was ignored, the individuals were liable to income tax and NICs on the value of the shares received. HMRC argued that the individuals should be treated as receiving cash, but the Supreme Court held that the *Ramsay* analysis could not ignore the fact that shares were received and that the cash value was not completely certain.

Earlier, the Court of Appeal had unanimously decided both cases in favour of the taxpayers, allowing the appeal of Deutsche Bank against the decision of the Upper Tribunal in favour of HMRC, and dismissing the appeal of HMRC against the decision of the Upper Tribunal in favour of UBS.

"The judgement (of Lord Reed) is significant in that he upholds the principle that, notwithstanding the clear literal wording of a taxing statute, it must be construed and applied purposively in the context of real-world transactions having a business or commercial purpose," said employee share schemes expert **David Pett** of **Pett, Franklin & Co.**

"So here, while the banks asserted that the terms of the scheme complied with the literal wording of the Income Tax (Earnings & Pensions) Act 2003, there was 'nothing in the background to suggest that Parliament intended that the particular provision in point (s423, as then drafted) should apply to transactions having no connection to the real world of business, where a restrictive condition [on the shares acquired by employees] was deliberately contrived with no…purpose other than to take advantage of the exemption," said Mr Pett. "On this basis, the shares acquired by employees were not to be regarded as 'restricted' and therefore the exemption from tax on their acquisition did not apply. However, the judgment goes on to say that the conditions in question must nevertheless still be taken into account for the purposes of assessing their taxable value, since ordinary taxation principles require the tax to be based on [their] true value".

In the cases of both UBS and Deutsche Bank, it was held that the employees were to be taxed on the value of the shares (in the SPV) they acquired as at the time of such acquisition. The Court rejected a broader argument that the employees should be treated as having received, and been taxed on, amounts of cash (as originally so determined by the First-Tier Tribunal): it accepted that what they received were shares, albeit not "restricted" shares. The Court of Appeal had erred in adopting a literal, not a purposive, construction of Chapter 2, Part 7 of the Act.

"We cannot now, it seems, take a taxing statute at its word, but must interpret and apply it having regard to the intention which should be attributed to Parliament!," added Mr Pett. "Here the shares were created and issued solely for the tax avoidance scheme and the SPV undertook no activity beyond its participation in the scheme. The encouragement of such schemes, unlike the encouragement of employee share ownership generally, or share incentive schemes in particular, would have no rational purposes….bearing in mind the general aim of income tax statutes."

It is a very significant decision, the importance of which extends beyond the taxation of share schemes. It amounts to a further development of the *Ramsay* approach to statutory interpretation and the 'purposive' approach to construction. Statutes are to be interpreted by reference to the 'real world,' said Deloitte.

Rangers EBT case drags on

The Scottish Court of Session (Inner House) gave taxpayers permission to appeal against its decision in *Advocate General for Scotland* v *Murray Group Holdings and others* (the Rangers EBT case). **(Murray Group v HMRC).** The previous owners of Rangers Football Club had launched a loan scheme for individual players in which the repayment terms were unclear. By cashing the loans, players avoided NICs and in some cases even Income Tax. HMRC argues that these loans were effectively disguised remuneration.

Mr Osborne announced in his Budget that the government would bring forward a package of changes aimed at cracking down on remaining disguised remuneration tax avoidance schemes. The changes will tackle disguised remuneration schemes used in the past as well as their continued use. Part of the package will be legislated in **Finance Bill 2016,** including closing down one type of scheme immediately, with the remainder to follow in Finance Bill 2017 following a technical consultation. ***This will include a new charge on loans paid through disguised remuneration schemes which have not been taxed and are still outstanding on April 5 2019.***

Shareholder rights

Centre member John Hunter, chairman of the **UK Shareholders Association**, said in his latest '*The Private Investor'* newsletter that the UK is no further forward towards the adoption of responsible individual share ownership rights than 15 years ago.

He wrote: "The shareholder ownership model has been essential for the wealth of developed countries. The combination of investment and control embodied ownership. The creation of a transferable legal basis for ownership – shares – and places where that ownership could be exchanged at a price – stock exchanges – was the final brick in the structure.

"In 2001 Lord Myners published his seminal report '*Institutional Investment in the UK*'. The report had considerable impact – he drew attention to the drift away from active ownership, to the increase in intermediaries, to the increase in voting capacity belonging to institutions who were custodians but not owners, to the various pressures that caused those institutions to allocate capital inefficiently. He adopted the memorable phrase '*ownerless corporations'* to describe the status of companies that didn't, in fact, appear to be owned by anybody. He made some suggestions on the future direction of travel.

"So where are we today? Well, no further forward actually. In all the reams of regulation, consultation and discussion that I have read about corporate governance and the mechanisms for trading shares there were endless concerns for the 'efficient' trading of shares but not one for the appropriate transfer of voting rights."

The issue is relevant to Centre members because increasing numbers of employee shareholders are demanding voting rights at company agms and egms, but not always getting them.

Mr Hunter singled out short selling. "Think how much regulatory attention has been paid to it. Yet short selling is enabled by stock lending. 'Stock-lending' is a comfortable phrase that conceals what is in fact a 'sale and repurchase' agreement – the stock is sold to the short-seller against a contract to repurchase the stock later at the same price plus a financing adjustment. The short-seller owns the stock for that period and he owns the voting rights. The short-seller, who is betting on a price fall and therefore has a financial interest in encouraging corporate mismanagement, has a voting interest in the company. Isn't that outrageous? It's only for a short time, you say. Yes, but it's at the time that matters. Observe the growth of short interest during contested takeovers. Most takeovers are conceptually misconceived and financially misjudged and cause the share price of the bidder to fall," he claimed.

"The fight for the rights of private investors can sometimes appear to be a technical skirmish of minor interest except to the participants. In reality the absence of these rights is doing economic damage as well as impeding a valuable ethical and analytical input to corporations. That is what we in UKSA, by example, must continue to promote," added Mr Hunter.

UK outpaces rest of EU in Eso participation, claim

Tax-friendly policies by the Cameron government are helping the UK to outstrip most other EU countries in the adoption of employee share ownership, according to the annual Eso survey by EFES – the European Federation of Employee Share Ownership.

The survey: 'Economic Survey of Employee Share Ownership in European Countries' said that the imbalance of Eso adoption had continued to widen between European countries. "Some European countries have chosen stronger incentive policies, promoting employee share ownership and long term savings as an investment for the future, including the UK, Austria and Spain." The first two had increased fiscal incentives for employee share ownership, considering it is a key element of recovery, while Spain had introduced a new law for employee-owned and participative companies.

On the other hand, some other countries had chosen to reduce public spending and to support household consumption, while incentives for long term savings and for employee share ownership were sacrificed, as in France, Greece, The Netherlands and Denmark, the survey report said. "Meanwhile, Germany maintained its reluctance to promote employee share ownership. While 28 percent of employees held shares of their company last year in the UK, a sharp drop below 21 percent was observed on the continent."

However, assets held by the employee owners in the EU were never so high:

€370 bn and more than three percent of the capital of all large European companies in 2015, according to EFES. "This works out at more than €45,000 per participant and still more than €25,000 if executive directors are excluded. Thus, even through the European crisis, employee share ownership is a formidable engine for sharing in results and growth – assets per person have more than doubled since 2009."

The number of employee shareholders in Europe stabilised in 2015. However, the decrease has been significant in continental Europe since 2011 (ten percent down and 700.000 fewer people participating) while at the same time the number participating increased by ten percent in the UK (+200.000 people). While assets held by European employees in shares of their company had increased spectacularly since 2009, these growing assets were spread over a declining number of employees in continental Europe. "Lower incentives have thus a clear consequence in continental Europe: The democratisation of employee share ownership regresses, leading to wealth concentration and higher inequalities," said the survey report.

The ratio of employee shareholders to total payroll in Europe's largest companies has fallen from a peak of 25.6 percent in 2010 to 22.6 percent in 2015 – a fall of almost 12 percent in overall share scheme participation rates.

Yet, by last year, 93 percent of all large European companies had employee share ownership plans of one kind or another in place. Finally, 29 percent of all large European companies had launched new employee share plans in 2015, not very different from previous years.

The survey data was drawn from 2,600 major companies, covering 36m employees in 31 European countries.

What if Brexit?

At some point soon, ideally before the referendum on June 23, someone is going to have to work out what a Brexit would mean for the world of employment law, wrote

David Whincup of *Squire Patton Boggs*. "At present, as Winston Churchill would probably not have put it, there has never been a referendum where so little has been known by so many about so much. That applies in spades to UK employment law, comprised as it is of an unholy brew of EU Directives which we may or may not have interpreted correctly, 1970s-inspired industrial relations law, case authorities and a variety of entirely self-inflicted wounds like the shared parental leave regime," he said: *The short point is that no one really has a clear steer on this – the UK would be in totally uncharted waters here, though that is unlikely to deter the running of hundreds of legal seminars on "HR and Brexit" where law firms demonstrate with the aid of handouts and PowerPoint that they don't know either.*

"The obvious starter is of course that exit from the EU would not by itself change any of our domestic employment law at all. It would merely allow us some scope to do so if we wished. So what would the UK change? There could be some chiselling around the edges of the discrimination regime, perhaps removing the reverse burden of proof or discrimination by association. The Government could look again at some of the less-intended side-effects of the Working Time Regulations, in particular the accrual of holidays while on extended sick or maternity leave, and the right to carry them forward so far after the period of work to which they relate that they can no longer have the remotest health and safety significance. Perhaps there would be support for a repeal of those parts of the Human Rights Act relating to rights to employee privacy or some tweaks to the agency worker rules. Or perhaps there would be none of those things.

"By the time the terms of any Brexit had been finalised, the Government would have its sights set firmly on the next election. It is therefore hard to see that it would then set about any material dismantling of the employment rights of the bulk of the electorate, wooing them with such temptations as longer hours, fewer and less-paid holidays, reduced freedom from discrimination, etc. Any attempt to re-write TUPE would inevitably end up looking pretty much like TUPE. It is impossible to see that the trade union movement would wear any dilution of the collective redundancy consultation rules. The financial services industry might welcome a relaxation of European limits on remuneration but it is unlikely that the Government would see that as a vote-winner either. So while the pundits and politicians can advance their violently different but all equally speculative opinions on what would happen as a result of a Brexit, let us suggest something that would not happen – any significant change in UK employment law for the foreseeable future."

Zero hours contracts banned in NZ

Zero-hour contracts have been outlawed in **New Zealand** after parliament passed unanimously a bill to ban the controversial practice. Political parties across the board supported the ban, which is being hailed as a major victory for minimum wage workers, particularly in the fast-food industry. The Unite union estimates there are hundreds of thousands of workers employed on zero-hour contracts in New Zealand, in which employers do not have to guarantee minimum hours of work per week and often expect employees to be available 24/7.

The contracts have caused controversy in the UK where the country's biggest sports retailer, **Sports Direct**, has 15,000 employees on zero-hour deals. The **Office for National Statistics** said recently that more than 700,000 UK employees have zero hours contracts. The Centre believes that companies which impose zero hour contracts on all or some of their employees should offer them options in the tax-approved Company Share Option Plan (CSOP) – especially the low paid.

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