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Hands off bankers' bonuses, say delegates at Cannes conference

Remuneration experts condemned unanimously proposed restrictions, drawn up by the European Parliament, to apply to bankers' bonuses within all member states from next January.

Complaints and accusations - that the impending regulations could threaten London's position as a global financial centre - followed thick and fast during an open delegates' debate during the 22nd annual conference of the World Centre for Employee Ownership, which took place in Cannes last month.

Hedge fund managers are caught by the new regime too, raising the risk that some will decamp to either Hong Kong or Switzerland.

The EU has confirmed the main restrictions -

*deferral of 40 percent of each banker bonus payout for a minimum three years *cash element in bonuses to be limited to 30 percent or only 20 percent if the bonus is very large *half the bonus to be paid in contingent capital, allowing the employer bank to pay out all in shares, if things go wrong in future

However, the EU Parliament did not propose an overall cap on bonus levels

Both **Amanda Flint,** Partner BDO Human Capital and **Sarah Pickering**, MD Alvarez Marsal Taxand LLP UK, told delegates that the impending EU bonus regime would make European based banks "uncompetitive" and that they would: "undermine London as a financial centre."

Peter Mossop, director at Sanne Group, said: "Our Hong Kong office has noted an increasing demand for the provision of UK style compensation and incentive structures, indicative of the fact that bankers and hedge fund managers are leaving London and are being drawn east".

Sarah Pickering said: "Companies are moving out of London and staffing up in Switzerland and the Far East - this new regulation goes too far"

Justin Cooper, chief operating officer at Capita Registrars, concurred, saying: "City people with entrepreneurial skills will start to drift away from London."

As for the claim that such new regulation would put all the G20 countries onto a level playing field, Amanda Flint said that there was uncertainty about to what extent both France and Germany would implement the banking bonus rules.

On a show of hands, none of the delegates present during the executive reward debate supported the EU restrictions on bankers' bonuses.

Centre chairman **Malcolm Hurlston**, who chaired the two-day conference at the Majestic Hotel, said: "We knew our practitioner members were unhappy about the unwelcome EU intervention into bankers' executive reward. Even so, we were taken aback by the force of delegates' hostility to the proposed restrictions. *This is a case of too many cooks spoiling the broth – for we have already not only shareholders, including investing institutions, who are ever more vigilant on the executive reward front, but also neutral 'referees' like the ABI and the FSA to set out and effectively police the executive reward terrain."*

Opening the conference, **Mr Hurlston** told delegates that the economic crisis was still impacting on the employee share ownership industry, reducing the launch of new employee equity plans. Remuneration committees would from now on have to watch their step when seeking to implement new incentive plans which allowed executives to double their money for achieving only average performance levels, because the public and the media would no longer tolerate this, the chairman warned.

From the Chairman

The Coalition government is attacking many outstanding issues with style and verve but we are not yet getting a clear picture of the place of employee ownership in their thinking. In the former Soviet Union you knew not to reply was to say no - here we may be more hopeful especially with Mark Hoban and David Gauke at the Treasury. Perhaps the LibDems too fondly remember their work for financial participation in the heady days of the Lib/Lab pact.

Despite all the crisis and urgency however the summer prevails in our parliamentary world even though there seems to be appetite for work in September and it is an interesting sign that there are many calls for evidence (which don't need to be responded to like consultations) which may be signals of speed.

Malcolm Hurlston

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Independent consumer representative **Mick McAteer**, who is advisor to the Committee of European Securities Regulators (CESR), told the conference said that he'd become "a bit of an evangelist" for employee share ownership, which could be very useful now that the perfect storm had hit the western world. "The more established methods of saving for the future have been undermined by events – we are seeing demographic and political/economic pressures too. Some Western countries can't afford to pay state pensions and all the pillars are crumbling," he added. "Eso offers considerable advantages for the economy, consumers and society generally. It ties in with a major public policy objective – to help people become more self-sufficient by having a savings and assets culture – and there is plenty of evidence that Eso helps improve productivity and loyalty in companies." The Prospectus Directive reforms (see inside) would save companies €18m, he said. A complete reform of regulation was under way – the CESR would be replaced by the European Securities & Markets Authority, which would be a more powerful and interventionist authority than its predecessor.

Leslie Moss of Hewitt Associates said that the economic environment had changed considerably during the past year. The UK and US economies while now growing, still looked sluggish, but even bailed-out banks were continuing to pay substantial bonuses. Both the US Left and Right were united - for different reasons - in their concern that President Obama was not doing enough to address the potential disconnect between bank boardrooms and the real world – the Right in regard to the cost of the bail-outs and the Left in respect of the perceived threat to social cohesion with such a wide gap between executive and average employee pay. In both the US and UK, that gap had grown in recent years and in some industries exceeds 200:1 and he hoped that in a period of austerity for the many, companies would recognise the importance of setting an example and not let executive reward get out of control. However regulators are more concerned about controlling the risks associated with substantial incentive payments rather than their size as such. Financial companies needed more capital to underpin their risk-taking than, say, a retailer, and bonus formulae based on measures such as risk-adjusted return on capital were therefore preferable. New regulations would require banks and other financial institutions to defer, with potential claw-back, a substantial element of bonuses to avoid paying out one year on misleading results, only for the bank to lose money the next, perhaps at the same time as employees' own employee share savings had fallen in value, said Mr Moss. "Remuneration committees are recognising that the regulators and the institutions are serious about the risk element in executive packages and the need to redesign them to minimise the exposure" he added.

Patrick Neave of the Association of British Insurers said that he was involved with 200 consultations per year about executive reward packages. Every 'Red Top' awarded to companies for infringing ABI guidance on performance reward parameters etc was a "failure of negotiation." Salary freezes were becoming widespread - 41 percent of FTSE 100 ceos had their salary levels frozen last year – and the average rise in executive reward across the board was 5.8 percent, he said. Why did so many FTSE100 incentive schemes look the same? – deferred share awards were becoming quite common and there was an increasing tendency for directors to hold onto their shares longer, said Mr Neave. The ABI had recently issued a position paper exhorting shareholders to open a dialogue with remuneration committees. Rem com behaviour to avoid was changing the performance conditions in mid life of the scheme, because that did not go down well. Executive plans should be simple and avoid complexity, he said. Many companies did not disclose their performance criteria, but that was changing, he said.

Joe Saburn of Squire Sanders & Dempsey described the new regulatory canvas for executive reward in the US. Ray Irani, top man at Occidental Petroleum, had obtained €96m in total reward last year, even though his basic salary was only €1.1m. His performance awards last year had topped €47m! There was uproar over executive compensation, especially in financial services, and there was broad consensus that the regulatory framework needed to be enhanced, said Mr Saburn. No wonder that 17 legal proposals about executive remuneration had been discussed in Congress. US companies were re-evaluating all compensation components and there had been falls in the levels of bonuses and long-term incentives. Some re-pricing of underwater stock options had crept under the fence, but retention incentives had fallen away, as there were no jobs around which might entice big hitters to leave their current posts, he added. The Senate had approved sweeping legislation to rewrite the rules of the financial industry, including – a separate shareholder vote on the reward of named executives, disclosure and shareholder approval of golden parachute packages, separation of chairman and ceo roles, claw-back provisions in contracts, which would be triggered if performance achievement turned out to be bogus, independent compensation committees, etc. Last year, 56 out of the top 200 US corporations had instituted bonus claw-back policies, even though they were difficult to enforce, said Mr Saburn. The media and others had attacked ex GE boss Jack Welsh's €139m goodbye package, but he had created billions of dollars of extra value in the company and had made it into a world player. Most of its stockholders had not begrudged him this farewell present.

Dr Jens Lowitzsch of the Free University of Berlin, discussed the rising tide of employee financial participation (Eso) within the EU. Jens is an expert in the EcoSoc study group which has been asked by the EU Commission to devise a strategy for increasing the reach of Eso within the member states, raising awareness of Eso/FP among the social partners and national institutions and identifying obstacles for cross-border Eso plans and suggesting possible solutions. Dr Lowitzsch gave delegates a ringside seat to gaze at all the problems he faced in assembling agreed texts from all the various interest groups. Sometimes "too many hands" had made the compromise text unreadable, the standard of English had left much to be desired. He praised the use of Esops in the UK as a business succession tool and thanked the Centre's Fred Hackworth for having submitted a paper on this issue to EcoSoc, to be forwarded to the EU Commission. He and Mr Hackworth had just returned from Brussels, where they had discussed the use of Eso as a restructuring tool - in a workshop and plenary session. The EU Commission would be asked to support national Esop models and to set up a revolving fund to provide leverage so that Eso solutions could be applied. The Centre was being asked to promote a national workshop in London as an extension of this project, he added.

Mark Gearing and **Pierre-Philippe Hendrickx** of Field Fisher Waterhouse discussed cross-border tax issues concerning employee equity incentives, especially in the UK and Belgium. Mark said that the new UK Budget Entrepreneurs Relief tax rate of ten percent on the first £5m potentially discriminates against employee share plan participants. Taper relief on CGT, which had helped make Enterprise Management Incentives so attractive had gone, so income and gains above £43,875 would now be subject to the new 28 percent CGT rate. A lobbying job was needed, he said. Although the UK framework remained intact, trusts used to defer or avoid tax would be attacked. Pierre-Philippe said that the Belgium tax system relating to equity incentive awards was very different, so executive moves between the two countries created very complicated tax issues. Income tax was levied when options were granted, whether they vested or not. HMRC guidance was sometimes unhelpful and executive mobility suffered adverse consequences. "There is a need for a common tax system within the EU but we do not have that today," they said.

Peter Leach of Killik Employee Services delivered the first-ever wealth management slot at the annual conference. He examined the implications of the new 50 percent income tax withholding rate on share plans, especially on the processing of executive option exercises and share plan releases. PAYE had to be operated on unapproved share plans and the changed PAYE rates of 20, 40 and 50 percent had made withholding very complicated and there was a risk of a penalty notice for getting it wrong, said Mr Leach.

Sarah Pickering of Alvarez & Marsal Taxand UK LLP and co-speaker **Wolfgang Kloevekorn** of Luther Rechtsanwaltsgesellschaft explained the employment tax issues on the purchase by Warner Chilcott of Proctor & Gamble's pharmaceutical business in 13 countries. Warner Chilcott used employee equity a lot – 50 percent stock options and 50 percent restricted stock units (not shares themselves, otherwise they would have been taxed up front) - and so Eso participants were well rewarded. "The salaries were OK, but equity is what everybody wants," said Sarah, who with Wolfgang, had to analyse all the P & G benefits, check all payslips following data migration, payroll transition and reporting, implement stock awards and bonus payments, etc. The data protection issue had made their task much more complicated, said Wolfgang. The Works Council had stopped them using much of the data.

Although the affected P & G employees had cashed out their unvested options etc on October 30 last year, Sarah and Wolfgang were not given the details of how much each received. Warner Chilcott had had to give new equity to the former P & G employees to compensate them for 'lost' equity expectations, Sarah added.

Andrea Hasell of Equiniti and **Francis O'Mahony** of BT delivered a case study on the migration of BT's international Eso plans. Francis explained how use of the internet had made the migration of records so much easier. BT has 10,000 international employees working in 60 countries and 80 percent of them participated in share plans. Apart from Sharesave and SIP etc, there are also various executive share plans and a US employee stock purchase plan. With Equiniti, participants could use a single logon to access their share plans and an extra 4,000 BT people had logged on for the first time as a result, he said. Moving the payroll from the former provider had been a costly exercise, said Andrea, but it had been an almost seamless transition for BT employees. However, Equiniti still had to liaise with the former provider over previous UK Sharesave contracts which had up to four years to run.

Amanda Flint of BDO Human Capital and **Jon Hather** of Barchester Healthcare Homes Ltd gave a case history about incentivising 500 key employees who managed 170 UK nursing homes and 15,000 employees. Choosing the right incentive plan was crucial and they had gone for growth shares, which relied on joint or shared ownership and split interest arrangements in an unapproved plan, said Amanda. This meant that the current value of the share was held by an offshore trustee, while the future value would be held by the executive. There was no payout for early leavers, who could be made to surrender their shares. The private equity investors in Barchester Healthcare knew that whenever they exited, the management would exit too, but they didn't want dilution and so shareholder agreements were vital in this unlisted company. However, the economic crisis had put off the exit.

Justin Cooper of Capita Registrars asked what had changed so far this year in both executive and broad-based Eso plans. Using the 'lies, damn lies and statistics' approach, Justin said that the number of companies with any underwater options had fallen from 471 to 295 last year, while the number of companies with underwater options *at maturity* had fallen from 229 to 159 over the same period. The Share Incentive Plan was celebrating its tenth anniversary: now almost 1m employees held an average £4563 worth of shares in a SIP at December 31, 2009. The new 50 percent top rate of income tax had prompted three major Capita clients to bring forward plan vesting to benefit top slice employees by saving them increased tax. On the regulatory front, the employee equity industry was seeing fines imposed by the Financial Services Authority on an almost weekly basis, added Mr Cooper. There were higher regulatory fees and higher levels of fines. The zero interest rate offered on SAYE contracts had made them less attractive but Capita had not seen any decline in the level of SAYE participation. Mr Cooper attacked the "ridiculously low level" of the monthly maximum approved share scheme employee participation limit – unchanged at £250 since 1991 – but since the government needed more, not less, tax from our pockets, no increase in the limit was likely, he added.

Quentin Digby of Freehills, Australia, discussed share plan changes in Oz, starting with the aborted new tax on share awards, which was heavily doctored after dozens of companies closed down their Eso schemes in protest. There had been a noticeable shift in Oz from option plans to performance shares, which were now almost universal in listed companies, said Digby. Shareholder groups had called for reworked performance hurdles in executive incentive plans, for example that total shareholder return should apply to part of the grant only, with a stretched earnings per share added over the vesting range. Picking up on the issue of whether some bonuses had been paid out in the US and Europe on the basis of bogus or misstated performance, could risk be quantified and added as a hurdle in performance plans, he asked? It would not be easy to implement that in Australia, he added.

Recession takes toll on all-employee plans

The number of companies operating approved all-employee share plans in the UK fell again last year, though only slightly, from 1380 to 1370, fresh HMRC statistics have revealed.

As the recession continued to take its toll, it was a far cry from the financial year 2006-7, when the number of companies operating approved all-employee plans - either SAYE-Sharesave or the Share Incentive Plan - or both, peaked at 1530.

By contrast, the number of companies operating the approved discretionary Enterprise Management Incentive share option awards – usually to key employees alone - rose from 9,110 to 10,050 last year, testament to the scheme's phenomenal success.

However, even the EMI had its setbacks – as the number of companies that issued EMI options to key employees fell from 2840 in 07-08 to 2550 in 08-09.

Unsurprisingly, the number of employees who received EMI options fell from 26,500 to 22,000 during the same year, while the initial value of the shares for which they had options collapsed from £310m to £210m. Furthermore, the number of key employees (often SME directors) who exercised their EMI options during the same period halved – from 8900 to just 4,900 in the financial year ended April 5, 2009.

Usage of another discretionary share option plan, the CSOP, fell back from 1880 to 1710 companies last year, said HMRC.

Predictably, in the all-employee share plan sector, it was SAYE-Sharesave, which took the brunt of the losses – the number of companies operating at least one Sharesave contract falling from 700 to 670 during the financial years 2007-8 and 2008-9. The number of companies operating the Share Incentive Plan (SIP) rose very slightly, from 860 to 870 over the same years.

Best international employee share plan award

During the Centre's Cannes conference (see front page) chairman Malcolm Hurlston announced the names of three finalists for the World Centre 2010 Award – '*Best Employee Share Ownership Plan for a company with over 1,500 employees'*. They are:

Shell nominated by Computershare:

This plan operates across more than 60 countries for 41,000 eligible employees. The excellent communication, were based around a paperless system and coping with 14 languages, was the crown jewel of the scheme. The scheme simplified the leavers' process, allowing them to keep accrued shares; made January the start/end of year and provided excellent phone and internet communications to resolve problems. This reduced the HR burden significantly. Take-up increased from 20 percent in 2008 to 27 percent in 2009 and to 44 percent this year.

BT nominated by Equiniti

A new UK Sharesave invitation was made in 2009 so that existing contracts would count towards the £250 savings limit even if cancelled early. This, coupled with a further drop in the share price, meant the launch was so successful they had to scale back savings applications by ten percent. International schemes were altered due to the weak sterling. Current participants could have their savings returned and keep share options (topping up savings balance with their own money). Now participating employees save in local currency, which offers more protection to overseas savers against adverse currency movements. Local champions were picked overseas to overcome cultural differences. The invitation was translated into seven languages, using personalised emails, brochures, e-chat, BT TV, and a multi-lingual help-line. Challenges included migration to a new administrator (Equiniti), lack of bonus on the three-year scheme and higher options prices. Overall participation increased, while it decreased in the UK (but still achieved a 36 percent take-up – which was good, considering the challenges).

Invensys nominated by YBS

Since the last invitation under this plan was made more than six years ago, this was offered as a new incentive. The take-up rate of more than 15 percent exceeded all expectations. There were 20,000 employees in 46 countries. The plan was offered to 11 countries, which mirrored the UK three-year approved plan. Tailored plans were implemented in Australia, China, France & US, including a phantom arrangement in China, due to legal complexity, explained YBS (Yorkshire Building Society). Overseas participants can save in a bank of their choice, given regular audits. There was a four-tier communications structure with local co-ordinators and a participant portal. The plan encompassed and promoted the five Invensys values: innovation (portal), agility (different overseas plans), integrity (on time & to budget), meritocracy (available to all levels) and courage (take up levels show faith in company).

The overall winner will be announced at a Centre black-tie dinner in the Oriental Club W1 on **Tuesday October 5.** To attend this event, either consult the Centre website at: www.hurlstons.com/esop and click on 'events' or phone/email David Poole at Centre HQ Tel: +44 20 7239 4971 or email: dpoole@hurlstons.com . You can book individually (£140&VAT), or reserve a table of ten for your colleagues (£1,300&VAT).

Thought leadership needed for Eso at Royal Mail

The Centre held a forum in thought leadership at member Computershare's offices on July 22. The aim of the round table discussion was to promote better thinking about future shares for Royal Mail employees. The government's plans to include employee ownership in any deal over the reorganisation of Royal Mail were confirmed in the Coalition's programme. The purpose of the meeting was to review the history of previous privatisations, to consider ideas for a form of Eso in the Royal Mail that would benefit the company and its employees and to carry forward ideas that emerged. Representatives of unions, the parties and think tanks heard Centre members Neil Sharpe of Hewitt New Bridge Street, David Pett of Pett, Franklin & Co. LLP and Maoiliosa O'Culachain of Global Shares give case studies of BT, the bus companies and Eircom respectively. In all successful examples, a common theme was the need to see what type of innovations global leaders were implementing and ask how that could work in the case at hand. This self-education needed to be passed on to the employees so that they could understand what was being worked towards and how it would affect them. Concerns were raised by Linda Jack of the Liberal Democrats that Royal Mail was above all a community and universal service. She warned that we must not lose sight of this in any proposed restructuring. Drawing from the Eircom example, where a universal service agreement was also in place, suggestions were made as to how this could be achieved.

Royal Mail employees had been on a roller coaster in recent years and that they wanted above all to ensure that whatever changes were made had to be right for the company and for job stability, said Steve Fishwick of the Communications Workers Union (CWU). With over 110,000 members, the CWU will be key to any deal.

From past examples it was clear that the preferable option would be to form a partnership early in the negotiations between the government, Royal Mail (both employees and management) and the unions to facilitate an open and frank dialogue. Involvement of all interested parties from an early stage would mean that a context for change could be created. All agreed that this context or justification for change, which could create excitement about the project, was as crucial to its success as the mechanisms of change themselves.

The Centre will carry out further research. It was agreed that a follow-up event would be organised to discuss the findings of the Hooper Report II when it is published.

CONFERENCES

Guernsey November 19

Due to the great success of the Esop Centre/STEP Worldwide conference in Jersey last Spring, we are pleased to announce a second combined conference will take place in the Autumn. The half-day event will be held at the Saint Pierre Park Hotel, Guernsey on **November 19 2010**. Tickets will cost £295 for Esop Centre members and Step Practitioners and £425 for all others. There are still a couple of speaker slots available – contact David Poole - dpoole@hurlstons.com.

Davos: Feb 3 & 4

The World Centre's 12th annual Global Employee Equity Forum takes place in the five-star Steigenberger Belvedere Hotel, Davos Platz, Switzerland, on **Thursday February 3 and Friday February 4**. Five speakers – Louise Jenkins of Ernst & Young; Adrian O'Shannessy of Greenwoods & Freehills (Australia); Mike Landon of MM & K; David Pett of Pett, Franklin & Co. LLP and Alan Judes of Strategic Remuneration – have already booked their slots. Other prospective speakers are advised to contact organizer Fred Hackworth (fhackworth@hurlstons.com) with their topic suggestions. A generous attendance price discount on our two hotel nights accommodation (on a half-board basis) + conference package deal is offered to all approved speakers. Please see the latest registered speaker interest and logistical info about Davos 2011 in the 'events' section of our website at: www. hurlstons.com/esop

Prospectus Directive

The EU Commission's proposals last year to extend the current employee share plans exemption in the EU Prospectus Directive (EU PD) to all companies, regardless of whether or not (or where) they are listed, led to a rumpus, as reported in previous issues of *newspad*. The EU Council of Ministers initially tried to stop the proposed changes from applying to the unlisted company sector and the EU Parliament was bemused by the row. The outcome is likely to be a partial victory for companies. The amendments are not as far-reaching as was originally proposed by the EU Commission and are likely to be somewhat disappointing for companies established outside the EU, said Clifford Chance. Some other changes, which have been proposed, may assist companies that will still be unable to take advantage of the employee share plans exemption from having to produce a prospectus.

The EU Parliament has now approved a number of amendments to the PD, including changes to the scope of the employee share plans exemption so that a wider variety of companies will be able to take advantage of it. *The exemption from the PD is to be extended to all companies whose HQ or registered office is within the EU. This applies regardless of whether or not the company is listed, or where.* Companies established outside the EU will qualify for the exemption if they are listed on an EU regulated market or if they are listed on a third country market which is recognised by the EU Commission as being governed by a regulatory regime equivalent to the EU regulatory regime. In such a case, the company will be required to provide '*adequate information*' including the employee information note referred to above. *In its current form, the process for a third country market to be recognized as equivalent is unlikely to be straightforward. For example, the recognition process must be instigated by a regulatory authority of a EU member state.* The revised employee share plans exemption may come as a disappointment for many non-EU listed companies. The current employee share plans exemption is still in force. Member states are expected to be given 18 months to implement the changes to the exemption (and the other changes to be made to the EU PD) once ratified at an EU level. This may lead to uncertainty if member states adopt different timelines for implementation. Of course, it remains to be seen how different Member States will interpret the changes in practice, added Clifford Chance. In the meantime, companies that do not qualify for the employee share plans exemption may still take advantage of the "light-touch" prospectus regime, which allows them to prepare a short-form prospectus. It remains to be seen whether this light-touch regime will continue once the revised exemption has been implemented.

IFRS 2 – Share based payments

At its July meeting, the IFRS Interpretations Committee took further steps towards clarifying the basis on which vesting conditions can be distinguished from non-vesting conditions, reported Centre member Pinsent Masons. A request for clarification was added to the agenda in January and since then, the topic has been discussed at the March and May meetings, including an analysis of the definitions relating to vesting and non-vesting conditions, the interaction between multiple vesting conditions and the determination of the attribution period. The Committee has made some "tentative decisions" in relation to these areas. These do not yet amount to changes to IFRS 2 but give an indication of the basis upon which proposed changes will be developed. These tentative decisions are:

- a performance condition should be defined by reference to the operation or activities of the entity but without reference to the proposed attributes
- there should be no change to the accounting for SAYE plans
- IPO and a change of control conditions should be deemed to constitute a performance condition.

There will be further research to refine the proposed definitions of performance condition, on-vesting condition and contingent feature and staff will consider whether specific examples should be included in the guidance on implementing IFRS 2.

Enterprise Management Incentives

The Coalition re-confirmed that the EMI legislation is to be amended so that more overseas based companies will be able to offer EMI options to their UK employees, reported Centre member Clifford Chance. The change is expected to be included in a Finance Bill to be published in the Autumn and will take effect for EMI options granted on or after the date the Bill receives Royal Assent. The tax-favoured EMI option arrangements allow eligible companies (broadly, those with gross assets not exceeding £30m) to grant options over, up to £3m worth of shares to one or more employees, each of whom can be granted options over shares worth up to £120,000. EMI carries significant tax advantages as the exercise of an EMI option (granted at market value) is generally free of income tax and NIC and the gain is instead subject to the more favourable CGT regime. EMI is a particularly valuable benefit in light of the increase in the top rate of income tax to 50 percent from April 6 2010 (and the increase in NIC from April 2011).

Darling's bonus tax pays off

Head-hunters are confident London will maintain its position as one of the world's top financial centres, in spite of discontent on Wall Street over the one-off UK tax on bankers' bonuses for last year. Wall Street's top five banks paid out $2.3bn to the UK Treasury in Q2 this year in extra tax. Morgan Stanley said it would pay $361m; Goldman Sachs said the tax resulted in extra costs of $600m; JP Morgan $550m, while Bank of America and Citigroup both took bonus tax hits of around $400m each. The move has upset certain executives. JP Morgan is currently dragging its heels on a plan to build a $3bn London headquarters, banking and property industry sources have said, and ceo Jamie Dimon was angered by the UK tax. Britain's one-off tax on 2009 bonuses is expected to bring in about £2.5 bn overall from overseas and domestic firms. Among UK banks, HSBC said the bonus tax cost it an estimated $355m, Barclays paid £225m and Royal Bank of Scotland £208m Deutsche Bank set aside €225m to pay the tax on bonuses in London.

The European Union agreed a deal placing new limits on bankers' bonuses from next year. Under the agreement with the European Parliament, bankers will receive no more than 30 percent of their bonus immediately and in cash, or 20 percent for larger bonuses. The remaining bonus payments will be delayed and linked to long-term performance, with 50 percent paid in shares. Hedge funds will be covered by the new rules. That will place the pay of hedge fund managers in the City of London under regulation for the first time, the BBC's business editor Robert Peston said. "The new rules won't make a big difference to bankers based in London. The Financial Services Authority has already imposed conditions on them, which many bankers would see as tougher. But the rules will have a big impact on hedge funds and other asset management firms." These rules have been agreed by EU member states and the European Parliament. The agreement includes proposals to link bonuses more closely to salaries and the long-term performance of the bank. Large severance packages for departing executives will also be limited. "These tough new rules on bonuses will transform the bonus culture and end incentives for excessive risk taking," said Arlene McCarthy, one MEP involved in negotiating the deal. The limits will apply to all 27 EU member states, although similar rules are already in place in countries including the UK. However, the new rules do not limit the size of bonuses that can be paid to bankers, only the proportions that must be paid in cash and shares, and the timing of those payments. That reflects the agreement reached by the G20 countries last year, which fell short of imposing caps on the amounts bankers could be paid in bonuses.

The UK government is considering a permanent tax on the pay and profits of banks, according to the City minister who urged the sector to demonstrate the pay restraint being demanded of workers in both the public and private sector. In an article in *guardian. co.uk,* Treasury Financial Secretary Mark Hoban hinted at a tax on bank profits and executive reward of the kind recently suggested by the IMF. A Treasury team is working on detailed proposals, but no final decision to proceed has been taken. Hoban defended the coalition's approach to the City in its first 70 days. He said the government was actively looking at an IMF-style tax on profits and pay. But he stepped back from saying the coalition was prepared to implement such a measure without international support. A banks balance sheet levy would bring in £2.5bn each year from 2012. Adopting a change of tone from his predecessor Lord Myners, who had repeatedly told bankers they were overpaid, Hoban told the City it was "better for the industry" to lead the changes needed to restrain bonuses. He used a speech to an audience of senior bankers to urge them to consider the public reaction to big pay deals. "I don't need to tell you that the next bonus round will be conducted against a background of continued pressure in the private sector," he said. "And by visibly reforming the way they operate, banks can show that they exist to serve the whole economy, not just their own interests."

Hundreds of thousands of pounds in bonuses are to be paid to **Home Office** staff amid a public sector pay freeze. Immigration minister Damien Green told the Commons home affairs select committee that the payments to senior officials would total £773,000. But he said it was in effect a pay cut because the amount set aside for bonuses last year was £1.4m. The HO said that, like others in the department, the staff would not be getting a pay rise. PM David Cameron has reiterated that when it comes to public sector pay those at the top have got to set an example. Home Office mandarins, like others in the public sector, are subject to a pay freeze - but there are extras on some salary slips. Chancellor George Osborne announced plans to freeze the pay of workers in the public sector for two years, except for those earning less than £21,000 a year, in his June Budget

M & S suffered a mild rebuke from shareholders over the £15m golden hello handed to new ceo Marc Bolland but it was not enough to force a rethink of the company's executive pay policy. At the agm, 16 percent of investors either voted against the M&S remuneration report or abstained, having been advised by corporate governance groups that Bolland's package was unacceptable. Marc Bolland, who was lured from Morrisons, is getting a basic salary of £950,000, an annual bonus of up to 250 percent of his salary and an exceptional share award worth another 400 percent of his basic pay. In addition, M&S gave him £7.5m in bonuses to buy out his retention incentives at his previous job. The decision to compensate Bolland for the bonuses he left behind in Bradford annoyed some investors. John Farmer, who regularly attends the M&S agm, told Rose that it could make it harder for companies to retain top boardroom talent. *"If it becomes common practice to pay large bonuses to executives when they start, it will undermine the incentive for them to stay with the company,"* Farmer said. Rose was quick to defend his successor's pay deal, pointing out that most of the £15m consisted of bonuses. "The bulk of Marc's remuneration is at risk – if the company does badly, then he does badly, and if the company does very well then he does very well."

Supermarket chain **Sainsbury**'s CEO Justin King attracted flak at the agm after his total pay package jumped by 60 percent to almost £8m As one shareholder put it: "The phrase of the day is pay restraint. This remuneration committee doesn't know the meaning of it." Sainsbury's chairman, David Tyler, defended King's pay deal, saying he was being rewarded for several years of success at the company. But Sainsbury's remuneration report won 98 percent support, even though Pirc, the corporate governance organisation, described Sainsbury's boardroom payouts as excessive.

Most of the 40 or so people at broker **Icap**'s agm were Icap advisors. This meant the board was not called upon to comment on founder Michael Spencer's January share sale, which netted him £45m three weeks before the company issued a profits warning. There was also no mention of the disagreements between Icap and US and British regulators during the last year, which have led to a financial penalties settlement in the US, and the enforced appointment of external operations auditor following a 166 Notice issued by the FSA in the UK.

More than one-third of the votes cast at **Tesco's** agm were against its boardroom pay policy. The remuneration report of the giant UK retailer attracted only 62 percent support in a backlash over its executive salaries. The supermarket chain faced a revolt from investor groups as they criticised allegedly 'excessive' bonuses for the company's top directors. Tim Mason, who runs Tesco America and who has been in the US to set-up Tesco's Fresh & Easy brand since 2007, was one of the top executives targeted. CtW Investment Group accused Tesco of readjusting performance targets in order to give Tim Mason larger bonuses. Furthermore, the investment group alleged that there was no sound evidence that Fresh & Easy's performance had warranted such awards to the US-based boss. Second only to chief executive Sir Terry Leahy, Mr Mason was the highest paid director earning a total of £4.3m last year. Voting advisory service RREV and Manifest joined the investor CtF in accusing Tesco of failing to appropriately award bonuses based on performance outcomes. Additionally, the consortium questioned the validity of discretionary bonuses for international targets. A Tesco spokesman said that the reports were disappointing as the chain had a strong performance in the past year despite facing harsh economic conditions. He added that proxy reports had supported the firm's decisions. CtW holds £126bn in US pension funds and has been at the forefront in the revolt against Tesco's executive rewards.

Defeat for HMRC on restricted share plans:
The Upper Tribunal upheld the decision in *PA Holdings Ltd v HMRC* on whether dividends to which employees were entitled through a Restricted Share Plan (RSP) were distributions and/or earnings, said Deloitte. It agreed with the First-tier Tribunal that, although the dividends to which employees were beneficially entitled through an RSP were in nature both distributions and earnings, the income tax rules prevented them from being taxed as both, and Taxes Act Section 20 confirmed that they can only be taxed as distributions. It dismissed HMRC's argument that, properly characterised, the payments were emoluments from the employees' employment, and confirmed that the dividends were liable to Class 1 NIC. See http://tinyurl.com/2clxktu

South Africa: MTN mobile phone network company announced a GBP700m broad-based Black Economic Empowerment (BEE) and Esop scheme for its employees. The scheme, which could raise employee equity by up to four percent of the total issued ords share capital, is the largest in the South African telecoms sector. Management and directors are excluded from the Esop offer which requires no equity contribution from eligible participants. This is part of MTN's SA BEE initiative, a key pillar of which is black equity ownership.

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