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it's our business

newspad of the Employee Share Ownership Centre

Industry dismay over Treasury 'damp squib' OTS response

Senior Centre members suspect that Treasury ministers are dragging their feet over the reform and simplification of tax-approved broad-based employee share schemes.

Criticisms focused on the Government's lukewarm response to a programme of change and improvements to the key all-employee share schemes, proposed last March by the Office of Tax Simplification.

Instead of using the OTS report as a means of implementing brisk and comprehensive reform measures, HMRC, the Treasury's tax wing, has launched a consultation exercise with a mid September deadline for industry responses.

Although HMRC said it wants to move forward on a number of OTS recommendations, some of them are comparatively minor, such as allowing more flexibility on the price payable by SIP participants where there is an accumulation period and giving companies more time to account for PAYE which arises when Share Incentive Plan (SIP) participants quit their jobs.

There is widespread dismay that, at the same time, the Treasury/HMRC response ruled out further consideration of two key OTS recommendations:

- Permitting withdrawal of SIP shares tax-free after three years instead of five and
- Reducing the many 'excluded activities' which prevent small companies from qualifying for the extremely popular Enterprise Management Incentive share options based scheme

Some share scheme advisers say that the Coalition is in lockdown over any reform that would, if implemented, increase the level or amount of tax relief from approved all-employee share plans.

Instead, said the Centre's representative on the OTS committee, **Mike Landon** of MM&K, the Government has only really made two firm commitments:

1. To abolish the current requirement for SIP, SAYE and the Company Share Option Plan (CSOP) to be approved by HMRC.
2. To investigate the current relevance of the CSOP for UK businesses.

From the Chairman

The cause of all-employee share ownership in quoted companies was not best served by the thrust of two government announcements in recent weeks: first the Treasury response to the OTS recommendations (read this page) and then the Clegg initiative on employee ownership.

The Treasury, scared by tax relief implications, has bottled out of root and branch reform of the structures of the main tax-approved employee share schemes, while in the second, the Cleggies (apologies to Bill Tidy) praised the John Lewis model, in which employees jointly 'own' the company, even if they don't receive any shares. There is perhaps undue focus on employee ownership with employees owning 25 percent or more of the equity. Despite the success stories, only a very small proportion of UK business can move down that road and I am unaware of many success stories in which the employees actually bought the business rather than had it gifted.

Turning to the bigger picture, the Whitehall view is that most UK employees of multinational companies already have the opportunity to participate in a range of all-employee equity schemes and so do not need further help. Besides, Treasury coffers are empty, they say. However, this ignores the millions of employees in smaller quoted UK companies, where, in many cases there are no broad-based employee share schemes of any kind and nor are there likely to be for the foreseeable future either. Meanwhile, aware that most small private business owners do not want to give away or sell their companies to their employees, Clegg's men are trying to find palatable ways of making owners disgorge. Although an employee's proposed 'right to request' may sound very polite, the flip side of that coin would be an employer's 'duty' to give away or sell his shares to employees.

Still, it is not too late: we have high hopes of the government's response to the Nuttall report offering a wider perspective and better understanding from the Treasury of the need for clarity. Neither faction within the Coalition seems to be taking any interest in the low paid and part timers whose need is greatest for the wages of capital.

Malcolm Hurlston

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It is the second commitment about which Mr Landon is most concerned: “As previously highlighted by the ESOP Centre, there is a real threat that tax relief for CSOP will be removed. Yet CSOP is the most flexible and popular of the three approved share plans and the only one which some companies are able to operate.” He added: “The OTS’s alternative proposal of increasing the flexibility of CSOP by merging it with EMI has been rejected for now. In my view, the most effective way of making CSOP more relevant for UK business would be to allow nil-cost options and/or conditional share awards to be granted. As for EMI options, income tax relief would only be given for any increase in the share price over the market value at the date of grant.”

Centre chairman Malcolm Hurlston has written to ministers to warn that the Centre will fight any final government proposal to scrap the CSOP.

If you agree that the correct approach is to improve the CSOP, and not to abolish it, please write to HMRC at shareschemes@hmrc.gsi.gov.uk to explain your reasons before the September 18 deadline.

Mr Landon said of the Treasury response: “Considering the long time it took for the Government to respond to the Office of Tax Simplification’s recommendations on tax-advantaged share plans (published March 6), it is a major disappointment.”

On the first commitment, the Government intends to legislate for self-certification of the ‘Big Three’ approved all-employee equity plans, as currently applies for EMI options. “Companies will be pleased that the current long delays in the approval process will be removed,” said Mr Landon. “But many will be concerned about the resulting uncertainty about whether their plans meet the requirements of the legislation, because HMRC’s interpretation of these requirements in the past has not always been predictable. The potential penalties for non-compliance may even discourage some companies from implementing the all-employee share plans,” he warned.

David Pett, partner at Pett, Franklin & Co. LLP, was equally sceptical of Treasury intentions:

“Having asked the OTS to investigate, weigh-up and report on, the changes appropriate to simplify - and presumably thereby encourage the wider adoption of - HMRC-approved employee share plans, the Government, by calling for evidence to *further* justify many of the changes proposed by the OTS, appears to be simply rehearsing the exercise. It had been hoped that the key OTS recommendations would have been accepted, and legislated for, without further ado,” said Mr Pett.

“The call for further views and evidence, made in Part three, indicates a reluctance on the part of HMRC to accept that companies only wish to offer shares to employees under an HMRC-approved scheme if there is an overriding commercial justification for doing so - the scope for ‘tax avoidance’ using approved schemes is limited. For example, the ***view*** is widely held that removing the requirements prohibiting ‘restrictions’ on shares used would allow companies a freedom to set terms of employees' participation which match the commercial needs of the company and its shareholders. Given that any restrictions will be reflected in the value of the shares, and consequently the quantum of tax relief, it is not clear that there would be a significant, or any, loss to the Treasury. However, responding to the request for ***evidence*** to substantiate this, and thereby prove a negative, will not be easy....” he added.

Another Centre member, employee ownership lawyer, **Robert Postlethwaite** said that without back-up, self-certification was inadequate: “A frequent complaint of practitioners is that CSOP, SAYE and SIPs require formal approval before they can be established. For companies that do not have vanilla plc-type articles, there are additional complications, as HMRC examines share rights and restrictions to determine whether they are consistent with the somewhat opaque legislation. The approval process generally takes a minimum of eight weeks, and can be much longer when, for example, changes in the articles have to be agreed.

“Although a move to self-certification is to be welcomed, we think it needs to be accompanied by the removal of many of the restrictions on eligible shares, many of which are agreed to be illogical and arbitrary,” said Robert Postlethwaite. “Another aspect of the consultation involves the simplification of some of the current restrictions, but unless they are removed or very much simplified, it is difficult to see how an adviser could confidently certify a plan as compliant with the legislation, unless the company is a listed plc. From a due diligence point of view, a potential buyer of a company operating an approved plan would have problems where an approved plan had been self-certified, unless the rules on restrictions were significantly relaxed. Without the protection of a formal HMRC approval, it would be difficult to resolve the question of whether the CSOP had been validly implemented, so creating a tax risk.”

The Government is seeking further views and evidence before deciding how to proceed on the following OTS recommendations

- Making the retirement provisions for SIP, SAYE and CSOP consistent.
- Removing or reducing the income tax and NICs liability when shares held in a SIP are acquired on a cash takeover.
- Simplifying the provisions which prevent

employees with a 'material interest' in the company from participating in approved share plans.
- Allowing shares with restrictions to be acquired through approved plans.
- Removing references to redundant legislation.
- Allowing more flexibility on the price payable by SIP participants where there is an accumulation period.
- Giving companies more time to account for PAYE, which arises when SIP participants leave or change jobs.
- Removing the £1,500 cap on dividends that can be reinvested in a SIP in any tax year.
- Removing the choice of 7-year options for SAYE. The recent fall in the seven-year SAYE bonus interest rates to zero may help to accelerate the demise of seven-year options, which are likely to be abolished in any case as a result of the OTS review. Less than one percent of outstanding SAYE options last for seven years**.**
- Increasing the 40-day limit during which EMI options can be exercised with tax relief after a 'disqualifying event' has occurred.

Proposals rejected by the Government

The Government has decided not to consult on the following OTS recommendations, probably because of the potential Exchequer impact.

- Relaxing the provisions that prevent companies with more than one class of shares from operating SAYE and CSOP.
- Allowing employees of associated companies, which are not subsidiaries, to participate.
- Reducing the period before SIP shares can be withdrawn tax-free from five to three years.
- Removing the EMI working time eligibility requirement for employees who are not directors.
- Reducing the number of 'excluded activities' which prevent companies from qualifying for EMI.

"Although the government appears committed to employee ownership in principle, the Treasury will be reluctant to sign off on any changes that reduce its receipts. The changes most likely to be adopted are therefore those that can demonstrate cost and administrative savings for companies, employees and HMRC alike," added Mr Postlethwaite.

OTS review of unapproved share plans

The OTS is carrying out a review of unapproved share plans. It has attended a large number of meetings with companies and professional advisers and conducted an online survey to identify key areas of complexity. An interim report will be issued shortly, which will set out the findings to date and ask for comments and further clarification of these findings. The final report, with recommendations for simplification, will be published in December or January.

Landmark Right to Request employee shares

The Government is seeking industry views on how a proposed landmark '*Right to Request*' - that shares be issued or sold to employees in businesses that do not have Eso schemes - could work in practice.

Such a revolutionary proposal, allowing employees to take the initiative, could, if implemented, lead to major expansion of employee share ownership in the UK SME sector, an Eso summit in London was told last month.

Ministers are to consult with all interested parties about when employee requests for shares should be allowed and what would be fair grounds for turning down a request.

Graeme Nuttall, a partner at Centre member **Field Fisher Waterhouse** LLP, wants a statutory right to be created where at least ten percent of a company's employees are in favour of the proposal and thinks that the right initially should apply to companies with 250 employees or more.

Restricting the right to have employee shares to companies of this size and above would mitigate an obvious 'moral' problem: as Eso participation among employees remains rightly voluntary, why should an SME business owner be *compelled* to sell some of his equity stake to his employees, if he doesn't want to do that?

The call for evidence, which deputy PM Nick Clegg said would be published shortly, will focus on the mechanics of Graeme Nuttall's proposal of a new *right to request* a share in the company's ownership. The Coalition will consider whether this should take the form of a new statutory right, or if another mechanism would be more appropriate, said Centre member **Pinsent Masons LLP.**

During the summit held at the Institute of Chartered Accountants, in the presence of Mr Clegg and senior Centre staff, the final report from the Nuttall Review of Employee Ownership was put forward, with its plans to make employee-owned businesses commonplace.

A new professional body for employee owned companies and access to off the shelf legal and regulatory material were among initiatives proposed by the Government to knock down the barriers to employee ownership. The Institute for Employee Ownership (IEO), will be established to provide information and advice to its members. New off-the-shelf DIY packs with information on legal, tax and other regulatory considerations would be made available to help companies adopt employee-owned business models quickly and easily.

Ministers are focusing on *employee ownership* – where employees either have a majority stake, or 25 percent plus of the equity - which is however only likely to be relevant to the smallest quoted companies. Lib-Dem ministers in particular are keen to remove the barriers preventing British businesses from becoming employee-owned co-operatives.

By contrast, employee *share* ownership is perceived by some ministers as being heavily subsidised by the taxpayer and therefore, according to this thinking, not in need of a further push from government.

The John Lewis Partnership, which is owned by its employees, is the most prominent employee-owned company in the UK, but Mr Nuttall said that others - including Arup and Swann-Morton, which manufactures and distributes surgical scalpels - had benefitted from decades of the employee ownership model. New public sector 'mutuals', including former Department for Work and Pensions (DWP) unit My Civil Service Pension (MyCSP), were beginning to benefit, he added. "These companies are in diverse business sectors, spread geographically and of varying sizes," Nuttall said. "The benefits of employee ownership are clearly demonstrated by these many UK success stories and it is now time the wider business community appreciated what employee ownership can do for business and the growth of the UK economy."

Department for Business Innovation & Skills (BIS) minister Norman Lamb wants the Centre to work with him in order to help put these plans into effect. Mr Lamb wrote personally to Centre chairman Malcolm Hurlston to thank him for his contribution to the summit on employee ownership. "*We have had a substantial amount of positive feedback about the event, including the interesting discussions from the roundtables. I certainly enjoyed, and learned from, my participation in them and I know they also spawned some new networks. We will draw on those and the feedback produced by you as we develop our response,"* the minister told Mr Hurlston. *"The Summit was a key milestone in our ambitions for the growth of this sector. I look forward to working with you as we make them a reality"*

Earlier this year MyCSP became the first central government mutual when its 475 staff were spun off from the DWP into the new structure. MyCSP staff enjoy collective part-ownership of the organisation, which administers pensions for 1.5m civil servants, together with private sector partner Xafinity Paymaster and the Government, which retains a stake in the new company.

A BIS spokesman said "Employee ownership, when combined with employee engagement, is shown to enhance business performance and improve employee well-being."

The Nuttall report identified the three key barriers to further uptake of employee ownership in the private sector as being: a lack of awareness; a lack of resources and the complexity of employee ownership. To overcome these barriers, he proposed:

1) *Government and the sector should raise awareness of employee ownership, through*:

- Promoting a clearer identity for employee ownership as a business model in its own right which leads to proven benefits, used by many successful businesses today;
- Advocacy work by Government and the sector, and in particular to ensure that employee ownership is considered as an option at more stages of the business lifecycle; and
- A new Right to Request employee ownership, aimed at encouraging employees and their employers to discuss employee ownership proposals within their companies.

2) *Government and the sector should increase the resources available to promote employee ownership, through:*

- A sector-led Institute for employee ownership, to lead on information and guidance on employee ownership; and support companies adopting employee ownership as well as existing employee owned companies; and
- Better promotion of the various sources of finance that can dovetail with employee owned company needs.

3) *Government should make it easier to set up and run an employee owned company, through:*

- Creating simplified off the shelf models of an employee owned company which reduce the complexity and uncertainty of the process. Model templates and toolkits would provide the information and guidance necessary to complete the process quickly and easily;
- Regulatory reform to simplify the processes underlying operating an employee owned company and reviews of other regulation and tax policy to ensure complexity is minimised.

4) *Measures to ensure implementation and maintain progress:*

- A one-year on report to monitor progress in implementation; and
- A sector steering group to advise the minister on the views of the employee ownership sector.

BIS commissioned a separate report from Cass Business School to look further at the impact of employer ownership on firms. This report found that employee owned businesses have a stronger long-term focus, invest more in human capital and have a greater preference for internal over external growth. Employee-owned businesses exist across a wide range of sectors such as healthcare, social care, education, transport, retail and professional services. They include micro-start ups and international companies.

The Cass report found that that employee owned businesses are more stable long-term and were more resilient in the last recession, compared to non-employee owned businesses. Other research concludes that employee owned businesses enjoy greater staff commitment and motivation, and points towards wider benefits such as greater job satisfaction, employee retention and innovation, and reduced absenteeism.

The sector shows potential for growth. Mutuo, an agency which promotes mutually-owned businesses, estimates that last year there were about 250 UK 'employee-owned' businesses with an annual turnover of approx £30bn and 130,000 employees.

Graeme Nuttall was commissioned by Mr Clegg earlier this year to examine how to promote employee ownership in the private sector and spread the benefits into the wider economy.

Mr Nuttall said: "Employee ownership has proven to be a great idea. My report provides a framework to move this successful model into the mainstream of the economy. I am calling upon the Government to ensure implementation of all my recommendations, maintain its focus upon employee ownership and translate its support into concrete changes that make a real difference to employee owned companies and those considering employee ownership." Mr Clegg said that the government would set up the Institute (IEO) in order to strengthen the skills of people to harness the opportunities available through employee ownership. He said: "We need to find the right levers to drive a kind of culture shift where going down the employee ownership route isn't a eureka moment, but is much more normal, commonplace. Not everyone wants to set up their own company, but we all know we could; we all know someone else who has."

The IEO will provide information and advice to managers, employees, lawyers, accountants, business schools researchers and Ministers. It will be a professional body which offers accreditation to its members.

Ed Mayo, secretary general of Co-operatives UK, said: "We are delighted to see the government's commitment to support and develop employee owned businesses. Co-owned businesses can take one of three forms; direct employee ownership, in which employees own the majority of shares in their company; indirect employee ownership where shares are held collectively on behalf of employees, usually through an employee share ownership trust (Esot) and direct and indirect ownership, which combines the above methods."

Minister for Employment Relations, Norman Lamb said: "This is a key milestone in the development of what I consider a very important and growing part of the economy. Graeme's report sets the immediate agenda and we must now respond - both in Government and the stakeholder community - to deliver the work needed to create a successful, flourishing and growing employee owned sector."

The London Stock Exchange announced plans for a new FTSE employee share ownership index. Xavier Rolet, ceo, London Stock Exchange Group plc said: "A new FTSE Employee Share Ownership Index (ESOI) will highlight some of the key benefits of encouraging employees to take an active interest in the future success of the companies in which they work. A new index will help raise awareness of how significant employee equity ownership can be advantageous for both companies and employees." The FTSE ESOI would focus on the performance of those employee owned businesses that consistently outperform the FTSE Index of shareholder owned companies. This would build upon the Employee Ownership Index, which is compiled by law firm Field Fisher Waterhouse and which celebrated its 20th birthday by announcing the Index has risen by 648 percent since its inception. An investment of £100 in January 1992 would equate to £648 today, while the same investment in the FTSE All-Share Index would be worth only £245. EOI monitors share prices of those UK public companies quoted on the London Stock Exchange and AIM where *ten percent or more* of its issued share capital is held by or on behalf of employees. "FFW is due to meet the London Stock Exchange Group shortly to discuss how it can help develop the existing Field Fisher Waterhouse UK Employee Ownership Index," Mr Nuttall told *newspad.*

Simon Walker, director-general of the Institute of Directors, said: "Employee ownership can be extremely positive for the productivity and morale of a business, so the Nuttall Review's exploration of how to deliver that is very welcome. Our aim as a nation should be to have a more participatory, more accountable and as a result more popular model of capitalism. Involving employees more closely in the future of the businesses for which they work is a great way to do that."

Mr Lamb, who is postal affairs minister too, set out the Government's next steps towards converting the Post Office into a mutual, following a consultation exercise last year.

SAYE: All bonuses at zero

All SAYE bonus interest rates are at zero percent, as of August 1, for first time ever, the Treasury revealed. This means that Sharesave participants must now rely on their company's share price to move up long-term, or suffer a loss on their investment if it does not, once retail price inflation is taken into account.

However, as yet the gradual fall in SAYE bonus rates doesn't seem to have affected take-up among participants or new company employee equity plans, Centre member **YBS** (formerly Yorkshire Building Society) reports. The concept of saving for the future, in effect of putting money aside in case economic recession and austerity continues, is keeping SAYE popular, Louise Drake of YBS believes. Revised Sharesave Bonus Rates were announced applying to Sharesave invitations made on or after August 1 2012. The bonus rate on the seven-year contract has been reduced to zero percent from 1.6 (Equivalent interest rate = 0.58 percent). The bonus rate on the three and five-year contracts remains unchanged at zero percent, along with early closure interest at zero percent too for all contracts. The mechanism used by HMRC to set Sharesave Bonus Rates is based on a fixed difference between market swap rates and the bonus rate. Take up rates for Sharesave remain strong with an average take up of 37.5 percent, and a bumper average monthly savings increase to £107, added YBS.

Last Eircom Esop pay-outs

The 14,147 members of the Eircom ESOP have been issued with cheques for up to €8,000 each. ESOP members who had the maximum allocation of shares will have received €95,000 tax-free over the life of the scheme, which is now being wound up. The payments made to the members are as a result of the ESOP distributing the bulk of its Emerald Communications (Cayman) preference shares. This will mean €85m will be distributed to participants. There will be a further distribution of €30m worth of Vodafone shares to the Esop members, due to take place before the end of the year. The ESOP had been due to be wound up by the end of 2014 in an agreement with the Irish Revenue Commissioners but the examinership process accelerated the winding up of the plan. The ESOP was one of the main beneficiaries of the mismanagement of Eircom since it was made public in 1999. The ESOT participated in loading the former state telecom company with €3.6bn of debt. James Barrett, chairman of the ESOP trust described the winding up of the plan as the end of an era in a letter to members. "The primary purpose of the ESOP since its establishment has been to be a strategic, long-term investor in Eircom, consistent with delivering the best possible outcome for its beneficiaries. "The recent restructuring of Eircom brings to an end a 13-year period for the ESOP as Eircom's longest continuing shareholder," said Mr Barrett.

Free shares awards

More than £200m was awarded to UK employees in free shares last year; 378,497 employees receiving on average £536 each in free shares during 2011. This was down from £676 per employee given to 353,235 employees in 2010. The tax-free shares were awarded as part of Share Incentive Plans (SIPs), up to the annual tax-approved maximum of £3,000 per employee. The survey of 451 companies, including 95 of the FTSE 100, revealed that more than 2m employees participated in an SAYE-Sharesave scheme in 2011, representing 37 percent of staff eligible to participate, according to the annual *ifs ProShare* Employee Share Survey. The average monthly sum employees contributed to a SAYE Sharesave grew slightly, to £102 from £101 in 2010, and an increasing number of staff are saving the maximum monthly amount of £250 - around 22 percent of participants in 2011. Employers such as BT, Aviva, National Grid and Asda all offer a range of SAYE and SIP (Share Incentive Plans) share schemes. 17,000 Asda employees recently received on average £2,900 each from an SAYE Sharesave scheme.

More occupational pensions misery

The growing gulf in the extent and quality of occupational pension schemes in the private and public sectors was glaringly apparent in the latest pensions statistics.

The National Association of Pension Funds (NAPF) said that one quarter of defined benefit schemes are now closed to future contributions while Royal Dutch Shell, which operated the last defined benefit pension scheme based on final salary among the FTSE 100 largest companies by share capital, closed the scheme to new members earlier this year.

There are 3.4m active members of defined *contribution* pension schemes in the UK, according to NAO figures. The DWP expects between five and eight million additional members by 2018 as a result of its automatic enrolment reforms, under which companies will have to enrol all eligible jobholders into a suitable work-based pension scheme. A phased roll-out of the programme, starting with the largest companies, begins in October this year. Latest ONS figures show that just 48 percent of UK employees belong to an employer-sponsored pension scheme.

Membership has fallen particularly heavily in the **private sector**, to only 37 percent of male employees and 26 percent of female employees in 2011, compared to 52 percent and 37 percent in 1997. This is especially true of defined *benefit* (DB) pension schemes, where overall membership has fallen from 34 percent in 1997 to just nine percent in 2011. Most defined benefit schemes in the private sector are now closed to new employees and many are closing to existing members, obliging them to enrol in hybrid or defined contribution (money purchase) schemes. The majority of private sector employees now belong to employer-sponsored personal (or stakeholder) pension schemes (14 percent) or defined *contribution* occupational pension schemes (nine percent).

However, pension scheme membership levels remain high in the **public sector**. Between 1997 and 2011, male employee membership fell slightly but remains at 85 percent, while female employee membership rose to 82 percent. Public sector schemes are normally defined *benefit* rather than defined *contribution,* although there has been a suggestion that they may shift from final salary to career average. Other changes recently announced include increased contribution levels, a higher retirement age and indexing linked to CPI rather than RPI.

On the move

Amanda Flint is now Employee Solutions Partner at Grant Thornton UK LLP. She is a leading UK adviser on share incentives and reward. She was invited to join Grant Thornton's prize winning employee solutions team to expand and extend its executive reward practice. Previously Amanda led a human capital team across Southern England at BDO LLP. Before that Amanda worked at one of the 'Big 4,' where she was a partner in the people services team, having earlier qualified as a solicitor (now non-practising).

Pearson has re-organised its share plans team, reports Centre member **Robert Head**. The team - Steve Leimgruber, Lesley McFee and Richard Grier, plus Rebecca Gardiner on maternity leave - now works within Pearson's Global Reward Team, which reports to Christine Trum, based in the US, but who spends time in the UK too.

The Finance Bill passed through all its House of Lords stages and received Royal Assent on July 17, reported Centre member **Deloitte.**

CONFERENCES

Awards Dinner November 6: More than 40 members have registered already for the World Centre's annual black-tie Awards Dinner, which takes place in the Oriental Club in London's west end on Tuesday November 6. A champagne reception will be followed by the dinner, during which the winners and runners-up for the three awards this year will be announced and their framed certificates presented by the guest of honour. For the first time, the Centre will make an award for the best share plan communications. Members wanting to buy dinner seats either individually, or a table of ten places, should contact Centre UK Director David Poole on 0207 239 4971 or email: dpoole@esopcentre.com. Members pay £160 + VAT for their tickets, while non-member plan issuers may attend for £175 + VAT each. Alternatively, members can pay £1,500 + VAT to book a table. Booking form can be downloaded from:

www.esopcentre.com/event/awards_dinner_2012.

In addition, David will be happy to discuss dinner sponsorship opportunities with interested Centre members.

GUERNSEY 2012 December 7

The Centre's annual joint employee share schemes conference, held in partnership with the Guernsey branch of the Society of Trust & Estate Practitioners (STEP), will take place on Friday December 7. Tickets are on sale now at £295 for Centre or STEP members and £425 for non-members. Please apply by email to esop@esopcentre.com.

Changes introduced by the disguised remuneration legislation have shaken up the trustee world and still represent a major challenge – a challenge that is best tackled if fully understood.

However, the government's keenness to encourage employee share ownership is an encouraging sign for EBTs. The Nuttall Review embraces the shares in trust model of employee ownership and should spark a new wave of business for Guernsey trusts.

The Centre is currently accepting proposals from speakers. We offer an attractive deal for speakers at this event: ***Either*** speakers are exempt from the delegate fee, but must pay their own travel/ accommodation expenses, ***or*** speakers can decide to pay the delegate fee, and the centre will reimburse travel and accommodation expenses.

Speakers at previous STEP/ Esop Centre conferences have found the audiences appreciative and knowledgeable, and have benefited from many good opportunities to initiate and develop ongoing business relationships. The Esop Centre's conferences are highly regarded and well attended, and are accredited by the Law Society.

Please submit a title with two or three bullets of the main topics to be covered to Tena Prelec at tprelec@esopcentre.com or call 0207 239 4970 for further information.

DAVOS February 7 & 8:

Potential speakers should contact Centre international director Fred Hackworth regarding the 14th Global Employee Equity Forum, which takes place on Thursday February 7 and Friday February 8 at the five-star Steigenberger Belvedere Hotel, in Davos Platz. Members are invited to put forward, or discuss, themes for half-hour speaker slots.

Our programme will include presentations about:

- *The reconstruction of executive incentives: Institutional investors and remuneration committees*
- *Risk as a Component in Executive Equity Incentive Plans*
- *How are the latest regulatory and legal developments impacting employee equity?*
- *Are proposed UK government administrative changes to tax approved Eso plans enough?*
- *Case studies on recent global and international all-employee and management equity plans*
- *How to make global equity plans cost effective while delivering value*
- *Cross-border equity award taxation issues for highly mobile employees and their employers*
- *Corporate governance issues in US employee equity plans*

- *Employee share ownership developments across the EU member states*
- *Offshore trustees: how is their role changing?*
- *Communicating equity plans to employees in a recession*

Members are welcome to submit other themes to Fred at: fhackworth@esopcentre.com.

Early confirmed speakers include: **Justin Cooper**, Chief Operating Officer, Capita Registrars; **Martyn Drake**, Plan Managers Director, Computershare; **Mike Landon**, Executive Compensation Director, MM&K; **David Pett**, partner, Pett, Franklin & Co. LLP and **Alan Judes**, MD, Strategic Remuneration.

Centre member service provider **speakers** will pay only **£765** for our two nights accommodation (on a half-board basis) + conference + cocktail party package deal. Plan issuer **speakers** will pay only **£465** for the same deal. Equivalent rates for Centre member **delegates** are**:** Practitioner (service provider) members **£905;** Eso plan issuer companies **£535.** Equivalent delegate rates for **non-members** are **£1,425** for practitioners and **£665** for plan issuers. Davos conference prices are not subject to VAT.

Please send delegate registrations to the same e-profile, with copy to esop@esopcentre.com Mark these dates in your diaries and get sign-off to attend from your purse-holder.

COMPANIES

Societe Generale offered its employees the opportunity to subscribe in its own shares for the 25th consecutive year. Soc Gen's 2012 Global Esop was offered to current and former employees in 58 countries. The offer was made from April 23 to May 7 2012 at a price of €19.19 per share, with a 20 percent discount from the base price. This year, despite the difficult economic and stock market environment, 28,900 current and former employees subscribed for a total €81m worth of shares. At the close of the 2012 Plan, the capital stock of Soc Gen had increased by 0.54 percent, with the issue of 4,191,357 new shares, and €975.3m subscribed cumulatively by employees. Societe Generale has around 160,000 employees, based in 77 countries.

Tax police raid homes

German and French tax authorities have searched the homes and offices of customers and employees of two of the largest Swiss banks. The searches are believed to be part of a crackdown on the use of Swiss banks to commit tax evasion. According to *Reuters,* 5,000 German clients of a large Swiss bank are being investigated for tax evasion. It appears that taxmen targeted customers whose names the German government bought from an informant at one of the banks in 2010. Meanwhile, French tax investigators, backed by police, raided the offices of another large Swiss bank in Lyon, Bordeaux, and Strasbourg, reported Baker & Hostetier LLP. Several high-ranking Swiss bank employees in Strasbourg had their homes searched too. In the US meanwhile, the IRS continues to mine data that it has received from 33,000 taxpayers, whose voluntary disclosures contain linking informant-like details. Additionally, the activation of FATCA looms on the horizon for US taxpayers who have not disclosed their foreign account holdings.

*The Appeal Court ruled against a scheme used by a businessman in a bid to avoid CGT on £11m. When another 200 taxpayers attempting to use the scheme are taken into account, the total cost in lost tax would have been nearer £100m, experts said. The ruling sets a precedent that could mean billions of pounds in potentially avoided tax will instead flow to the public purse. After a case about 30 years ago, such schemes were seen as invalid, but the legal situation was not watertight. However, this case reinforces the so-called **'Ramsay Principle'** - that artificial schemes, which facilitate the circulation of money in a bid to avoid tax are *a priori* invalid. "This gives a very clear indication of the way courts are now looking at tax schemes," said Mike Warburton of Grant Thornton: "The ruling says in effect, 'we are not going to countenance aggressive tax schemes'. You have to see this as an important victory for the taxman. Things are now running very much against tax avoidance schemes, both politically and in the courts." The case was brought by HMRC against Howard Schofield. It involved a complex series of derivatives transactions that, in effect, went in a circle but had the effect of avoiding the tax otherwise due.

Bonus Corner

Barclays agreed a resignation package with ex-chief executive Bob Diamond in which he forfeits up to £20m in bonuses and incentives, but will receive a year's salary, pension and other benefits worth £2m. Mr. Diamond resigned after Barclays was fined £290m by US and UK regulators for making false reports of its true borrowing costs between 2005 and 2009 (the Libor rates scandal). Barclays said that Diamond had agreed that his unvested deferred bonus awards and long-term incentives would lapse and that he would not receive any future bonus or incentive awards or compensation in the wake of terminating his employment. The bank's outgoing chairman, Marcus Agius, in his testimony to the Commons Treasury Committee, said Diamond had waived a potential £20m in bonuses and share awards. "It is my hope that my decision to step down and today's agreement on my remuneration will help close this chapter and allow Barclays to move forward and prosper," said Diamond. Shareholders held talks with Agius and his deputy Sir Mike Rake, pressing both men to ensure that Barclays reworks its very generous remuneration structure for the senior post. Diamond received £100m in pay, bonuses and pensions contributions since 2005. His remuneration package for 2011 had been set at £17.7m before he resigned, despite uproar from shareholders. Last April, 32 percent of investors voted against or withheld votes over the bank's pay report. "The pay structure has just been proved to be out of sync with long-term goals," said one Barclays shareholder. Investors want the pay package of the new ceo to be far more conservative, with more transparency over variable pay, and much longer vesting periods for shares to turn into cash. Long-term incentive shares could be stretched from three years to five to force bankers to be more focused on long-term performance at the bank, rather than betting riskier short-term gains.

David Brennan, the ousted ceo of **AstraZeneca**, is to receive up to £4.4m in cash and shares and a pension worth just under £1m per year. The man widely blamed for Astra's underperformance received the bumper payout despite saying he would forego his annual bonus. His payout is made up of £914,122 in cash for the 11 months of his contract he will not work. There is a further £1.5m in shares relating to previous year awards. He could get up to £2m on top of this for shares granted to him under previous bonuses. He will immediately be able to draw down up to £978,000 a year from his £14m pension pot. The multi-million pound payouts come despite Mr Brennan and the company agreeing he should not get any bonus for the five months he worked this year. Astra's remuneration committee decided he should forfeit any share awards under the company's 2011 and 2012 schemes. Brennan left the company after 36 years service, six of those as ceo. His tenure at the top coincided with a disastrous series of failed drug development programmes and a steady decline in earnings. Seemingly unable to stop the rot and faced with growing discontent from shareholders, he stepped down in April.

Kodak asked a US Bankruptcy Court for permission to pay bonuses to 15 of its top management, as it moves to the next phase of its restructuring. Under the terms of the plan, 15 top executives and managers, including chief executive Antonio Perez, would be paid a total of up to $17.6m in cash and deferred stock depending on the successful restructure of Kodak and payments to unsecured creditors. Perez would be eligible for a maximum payout of $4.4m under the scheme, which allows participants to earn up to 200 percent of their target award, depending on the level of payout to unsecured creditors. In order to earn 100 percent of their target award, the payout to creditors must be in excess of 30 cents in the $; the bonus rises to a maximum of 200 percent of the target award, if Kodak's creditors recover 100 percent of the money owed to them.

Yang Yuanquing, ceo of Chinese computer maker **Lenovo,** gave his own extra bonus of $3m to more than a thousand rank and file employees, who each received an average 2,000 yuan (£200).

A **Rio** director launched a comprehensive review of the miner's executive pay system, targeting the firm's performance share plan. The plan is part of Rio's long-term incentive described by another investor as a 'heads they win, tails they win' clause. It assures Rio officials of performance bonuses even in a bad year. The review was initiated by John Varley, a new Rio director and chair of the remuneration committee, ahead of an order by Rio chairman Jan du Plessis for an end to excessive executive compensation packages. The call for more oversight over executive pay was triggered by the global financial crisis when some US and European bankers continued to enjoy hefty pay rises and bonuses even if their banks were rescued by money from taxpayers.

New **Yahoo** ceo Marissa Mayer's compensation package could reach $70m in salary, bonuses, restricted stock and stock options over five years, according to a regulatory filing made by the company. Mayer's compensation comprises $1m in annual salary, as much as $2m in annual bonus, and $42m in stock options and other awards, as well as $14m in '*make whole restricted options'* – i.e. a Golden Hello - for forfeiture of compensation from Google Inc. By including some stock grants, Mayer could earn up to $20m a year, a Yahoo spokeswoman told *Reuters.*

Axe cash bonuses call

A review commissioned by the government of Britain's stock market culture has proposed axing cash bonuses for company executives and an end to the quarterly reporting of corporate financial results in order to combat 'short-termism' in the City.

Author Prof John Kay of the London School of Economics stopped short of demanding an end to boardroom bonuses altogether. Instead, his review recommended that all bonuses should be paid in shares that can be cashed in only once an executive has retired.

The review is part of Business Secretary Vince Cable's efforts to reform Britain's financial industry. Its aim is to promote sustainable companies and better rights for savers, by restoring "relationships of trust and confidence in the investment chain".

In a trenchant attack on boardroom remuneration, the report – *The Kay Review of UK Equity Markets and Long-Term Decision Making* – said that "any bonuses should be paid in shares" and those shares should be held until "significantly beyond the executive's tenure with the company". Kay confirmed to the *Guardian* newspaper that in his view cash bonuses should be scrapped. His report questioned whether bonuses need to be paid to company directors at all: "Many people doing responsible and demanding jobs – cabinet ministers, judges, surgeons, research scientists – do not receive bonuses, and would be insulted by the suggestion that the prospect of bonuses would encourage them to perform their duties more conscientiously." Asset managers' pay should also be reformed, said Kay. The interests of those running investment funds should be aligned with their customers by requiring them to hold an interest in the fund, either directly or via the firm, throughout their involvement with it. This would replace rewards related to short-term performance of the fund or the asset management firm. Prof Kay's proposals will meet stiff resistance in boardrooms and the Confederation of British Industry has given them a lukewarm reception: "Executive pay should always be linked squarely to good performance over a meaningful period of time, but it is for individual companies to decide their own pay strategy,' said Matthew Fell, CBI director for competitive markets.

Bonus clawback

JPMorgan plans to claw back millions in stock compensation from top executives as it disclosed a £2.8bn trading loss in its chief investment office (JP Morgan Chase) in second quarter earnings. JPMorgan wants to take back millions in stock compensation granted to three executives at the heart of a trading loss on illiquid credit products. It said that those responsible for the losses had been dismissed without severance pay and that it would demand that they repay two years worth of previous performance incentive pay. JP Morgan detailed a far worse trading loss on credit products than originally revealed. The company in May accepted the early retirement of former CIO head Ina Drew, who had worked for the bank for more than 20 years. Ceo Jamie Dimon praised Drew's talents and integrity, saying she volunteered to leave and to repay the maximum claw back amount of the $31.5m she was awarded in 2010 and 2011. Other top CIO lieutenants like 'London Whale' trader Bruno Iksil, and group managers Achilles Macris and Javier Martin-Artajo, who have all recently stepped down, or stripped of trading duties, will be asked to return bonuses too. The additional losses came to light as the finance house unwound what was reported to be a c. $100bn position in obscure corporate credit indices, said *The Wall Street Journal*. Since the position may not yet be fully unwound, JPMorgan said it might lose up to an additional $1bn plus. Nevertheless, it still reported an overall three month net profit of £5bn, a fall of 8.7 percent on the same quarter last year, despite the illiquid credit losses. According to the 2010 Dodd Frank Wall Street Reform and Consumer Protection Act, banks are now required to disclose their claw back policies and adopt a policy to recover current and former executive bonuses, in the event of an earnings restatement that would have impacted incentive-based pay. Claw back provisions for executive bonus can now be triggered for up to three years after an earnings restatement.

All company directors should be forced to repay bonuses if they under-perform, said '*Executive Compensation: Reward for success not failure,'* published by the Policy Exchange think tank. It advocates introducing claw backs to all bonus contracts as the best way to end rewards for failure in the boardroom. Claw back would be an effective way of ensuring shareholders are able to reduce the outgoing pay of a poor performing director who had decided to resign. Remuneration committees should set downside conditions to director contracts, which, if breached, would trigger claw backs. Clear targets such as underperformance in terms of total shareholder return, a fall in the absolute share price beyond a certain level or a rise in the credit spread of the company's debt beyond a certain level would enable shareholders to see whether the company and its managements had failed in some way. To build up a claw back fund, half of all bonuses and long-term incentive payments would be put in an escrow account and paid out evenly over five years. The company could withdraw the funds if directors under-performed. The report, published to coincide with the government's consultation into executive pay and shareholder rights, said that claw back would be a much more effective mechanism to end rewards for failure than the Government's current proposals. This still allowed companies to agree termination payments with under-performing employees. While exit payments are still likely under these proposals, a properly drawn up claw back scheme could easily overwhelm these in the case of failure. Indeed, claw back would be structured to ensure that the greater the underperformance the more the executive would have to pay back, the Policy Exchange report added.

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