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it's our business

newspad of the Employee Share Ownership Centre

Treasury consults on new employee shareholding vehicle

The government is consulting on whether to introduce a new employee shareholding vehicle as an alternative to the employee benefit trust (EBT) – a move recommended by the Office of Tax Simplification (OTS) – to ease the introduction of employee ownership in privately-held companies.

HMRC and the Treasury want to receive evidence from anyone with an interest in employee share schemes, particularly employers, employees, tax professionals, and employee share scheme experts on plans to launch an employee shareholding vehicle and views on a second proposal to introduce a defined marketable security. The Centre is consulting its advisory committees.

The OTS said that a new employee shareholding vehicle (ESV) should make it easier for unquoted companies wishing to manage their employee share schemes and create a market for employees' shares. An HMRC/Treasury discussion paper seeks views on:

- the level of demand for such a vehicle should it be introduced;
- the relative need and demand for the exemptions recommended by the OTS;
- the effectiveness of the safeguards for the Exchequer recommended by the OTS and whether further safeguards might be necessary to protect against tax avoidance.

The second proposal on the marketable security would involve significant change to the taxation of employment related securities (ERS). HMRC said this would allow individuals to choose whether the tax charge on ERS arose when they were acquired or, if different, at the time at which they can be sold for cash (when they become marketable).

Both consultations close on October 10, with government responses expected in the autumn.

The Treasury/HMRC said: "The government wants to investigate the potential opportunity to go further in meeting the OTS's recommendations. We seek views from businesses, employees and share scheme experts on some of the important issues raised by the proposal for an ESV. The OTS believes this proposal would allow shares in unquoted companies in particular to be held and traded on behalf of their employees more easily and at reduced cost without the perceived hurdles for existing EBTs. This is a far-reaching idea and it is important that, before taking a decision on whether to proceed, the government has a firm understanding of the implications of introducing such a vehicle. Responses to this paper will inform the government's next steps. Consistent with the tax policy-making framework, should the government decide to proceed with the implementation of an employee shareholding vehicle then it is the intention that there would be a formal consultation to seek views on the detail.

"The government is keen to hear views from companies that currently use unapproved employee ownership schemes and from those that have so far decided against doing so for reasons of complexity and cost. The views of advisers and employee share scheme experts will be very important in aiding the government in reaching a decision on how to proceed. When responding to the questions posed in this discussion paper, particularly in relation to the tax issues and safeguards explored, it would be helpful if consideration could be given to:

- the extent to which the tax issue itself arises currently;
- any related administrative costs or burdens;

From the Chairman

With five year Sharesave maturities coming up there must be thousands of happy employees looking at exciting sums: a great opportunity for us to tell the world about the wages of capital and how employee share plans work. For that to succeed we need people ready to stand up and be quoted in the media and employers ready to help them. Help..we need somebody. If you are in London during the break, I recommend the new WW1 exhibition at the Imperial War Museum, starting with the Kitchener poster.

Malcolm Hurlston CBE

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- what would change as a result of the proposals.

"As stated in the OTS's report, the government recognises that EBTs are one of a range of employee share ownership models that may be legitimately applied without the intention of avoiding tax. However, the OTS has identified some complexities faced by companies and their advisers that can discourage the use of EBTs or result in them being established offshore," said HMRC/Treasury.

"The OTS advised the government that there is a case for providing companies, particularly unquoted companies, with access to a simpler and more cost effective vehicle that would allow them to hold, acquire and dispose of shares. This is primarily for those companies that wish to reduce administrative costs by switching from an existing vehicle or have been discouraged from employee ownership altogether because of the cost and complexity. The OTS proposal is not designed to provide companies with tax advantages beyond those that could currently be legitimately claimed by operating an existing EBT or offering shares through the market."

The OTS described the central case for change in its final report as follows:

"Our recommendation is the introduction of a simple vehicle to enable companies (mostly, but not exclusively unquoted) to manage their employee share arrangements and create a market for employees' shares. This could be a statutory *safe harbour* employee benefit trust (EBT). However, EBTs have acquired something of a bad name of late because of their use for tax avoidance purposes and we have no wish to create new avoidance opportunities. There is, though, a real need to create a vehicle – some form of entity that might be a form of EBT – which can be used safely and easily by private companies wishing to establish employee share schemes. Companies need such a vehicle to provide a marketplace for employee shares and to allow such shares to be warehoused until allocated to individuals. Accordingly, we recommend an '*Employee Shareholding Vehicle'*; this may be a trust, but in this report we use 'vehicle' so as not to prejudice reactions to this recommendation. The aim is to provide companies with protection from some of the tax traps which exist in the extremely complex anti-avoidance legislation but at the same time ensure protection for HMRC by restricting carefully what this vehicle can be used for. This recommendation is of particular importance if government policy is to encourage wider employee ownership in private companies."

The OTS outlined several tax issues that the vehicle could address to achieve its aim of providing a simpler vehicle for those wishing to use an employee ownership scheme and create a marketplace for employees' shares. These issues include:

- the risk of inheritance tax charges under certain circumstances unless certain rules are followed;
- the risk of charging CGT on trustees' gains and income tax on shares received by an employee encourages offshore EBTs, which are considered more costly to administer than onshore equivalents;
- tax on loans to finance EBTs;
- the transaction in securities rules;
- stamp duty reserve tax on the purchase of shares by the trustees of an EBT, or by employees when they purchase shares from the trustees;
- access to other tax-advantaged schemes under certain circumstances;
- the recently introduced arrangements to tackle the deferral or avoidance of income tax or national insurance contributions through disguised remuneration.

To protect the Exchequer from potential abuse by the minority, OTS recommends various safeguards:

- the vehicle should be a UK resident and, if a trust, all its trustees should be UK resident;
- beneficiaries should be limited to employees and former employees rather than the wider definition under the Companies Act 2006, which includes spouses, civil partners and children or step-children;
- property held within the vehicle must not be applied other than for the specific purpose of encouraging or facilitating employee shareholding;
- the new vehicle may deal only with fully paid non -redeemable ordinary shares in the sponsoring company or its holding company, except in the case of a corporate transaction in cash or resulting in a share for share exchange;
- that breach of any of these conditions would mean the exemptions would no longer apply and which could, potentially, be backdated for several years unless the breach is proven to be trivial or accidental;

The OTS recommends that anything short of all (or most) of these points being addressed would not provide companies with a practicable proposition for wishing to use a new vehicle for employee shares.

Other features of the second OTS proposal on ERS include changes to the rules on 'readily convertible assets' and to the taxation of dividend and similar income from employment-related securities in certain circumstances. "This consultation is designed to explore areas in which the Government believes that further discussion on this OTS proposal, and further evidence of the potential impact, would be helpful to its consideration of whether to proceed with any changes," said HMRC.

Reacting to the consultation announcements, Centre member Deloitte commented: "This [marketable security] proposal is aimed at helping facilitate share plans in private companies where a market for the shares is not readily available. The OTS highlighted that dry tax charges, in particular, were a barrier to participation, and this proposal seeks to help alleviate those concerns. However, these proposals will have a far reaching impact on all companies, not just those in the private environment." The employee shareholding vehicle, meanwhile, is "particularly aimed at small companies who struggle with the administration and costs associated with operating an EBT. However, if such proposals were taken up, the new 'vehicle' could be suitable for all types and sizes of companies, and could help with the funding and operation of global share plans."

HMRC has convened a meeting for September 26 2014 (10am-12pm) to discuss the consultations. The meeting will be held at 100 Parliament Street, London, SW1A 2BQ. The indication thus far is that the meeting will focus on the proposed employee shareholding vehicle. To register your interest in attending the meeting, contact the Employee Shares & Securities Unit at the following email address: shareschemes@hmrc.gsi.gov.uk.

Responses to the ESV consultation are invited by October 10 to:
employeeshareholdingvehicle@hmtreasury.gsi.gov.uk

Hard copies can be sent to: Personal Tax Team, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ.

Responses to the ERS consultation are invited by October 10 to: shareschemes@hmrc.gsi.gov.uk.

Hard copies can be sent to: HM Revenue and Customs Savings and Share Schemes Team, Room G53, 100 Parliament Street, London, SW1A 2BQ.

BIS declines end to EBT non-perpetuity rule

The Department for Business Innovation & Skills, after consultation, has refused the request of the **Employee Ownership Association** and others to remove the non-perpetuity rule for employee benefit trusts (EBTs). Despite the recommendation in the 2012 Nuttall Review of Employee Ownership that EBTs should be exempt from the perpetuity rule, BIS announced: "There is insufficient evidence at this point to take the Nuttall recommendation on the perpetuity rule any further, but that the issue may be reconsidered when such evidence is forthcoming."

The BIS consultation last November asked whether it would help the cause of employee ownership if the limit on the life of an EBT (currently 80 years) were removed. There were only 28 responses and no strong feeling/evidence either way, so the Government shelved the idea.

The main arguments in favour of removal were that it:

- creates uncertainty for businesses and their customers;
- has the potential for unfairness, e.g. in terms of windfall payments to late joiners;
- presents an unnecessary financial burden and operational risk.

All respondents recommended that any new exemption from the rule should be strictly limited to firms who genuinely supported employee ownership and that those firms with existing trusts should be allowed to opt in.

The main argument against removal of the rule was that too few firms are likely to be affected to justify the resources required to proceed with the proposal. The call for evidence produced very limited evidence on the number of businesses likely to be affected by the rule.

"While BIS accepts that there strong views that the rule against perpetuities should not apply to certain employee benefit trusts, there is still insufficient evidence either on the benefits of such a change, or of how many trusts are likely to be affected," said Vince Cable's department. "Without the necessary evidence, BIS is unable to recommend that this recommendation should be taken forward. Government will, therefore, consider the matter again, when there is more information and data available on employee benefit trusts in England and Wales."

The call for evidence also invited businesses and their advisors to submit examples of any perceived or actual complexities of employee ownership. The request resulted in no new evidence and the BIS report concluded that: "The main challenge facing employee ownership is not complexity but lack of awareness of the benefits of employee ownership, to business and society... we also agree that action to raise awareness of the benefits of employee ownership is of greater significance to the sector, and look forward to supporting stakeholders as they decide on next steps in this regard."

"The fact is that not every business is, or could be, a John Lewis as not every owner is philanthropic enough to want to hand his or her company over to the employees," said Sarah Nicholson of lawyers **Squire Patton Boggs**. "The tax breaks for a shareholder transferring a majority holding in a company to an employee ownership trust are encouraging, but do nothing to solve the issue of how a company is to finance the purchase of such a large stake. Hopefully, if the long-promised fund for this purpose emerges, it might just prove that employee ownership is not dead yet," she added.

Further decline of CSOP exposed in HMRC statistics

The long-term future of the tax-advantaged Company Share Option Plan (CSOP) again looked uncertain after latest HMRC statistics revealed a further plunge in its use by UK companies last year.

This decline is particularly galling because the Centre, helped by leading members, fought so hard to save the CSOP from the axe during the OTS review of tax-advantaged share schemes two years ago.

While the options-based Enterprise Management Incentive (EMI) scheme goes from strength to strength and the total value of all shares and options awarded under the four approved employee share schemes rose by seven percent last year, CSOPs and SAYE schemes continue to struggle.

Taking three recent anchor points in the fiscal years – 2005-6, 2009-10 and 2012-13 – the number of live CSOP schemes declined from 3,030 to 1,910 and then down to 1,380 by April last year. Over the same three years, the number of live SAYE schemes fell from 960 to 720 and then down again to just 550 last year.

By contrast, the use of EMI went up from 6,820 schemes in 2009-10 (no earlier figures available) to 8,630 last year. The use of the SIP was roughly stable throughout the period: 880 live schemes in 2005-6 and 850 SIPs last year.

The CSOP situation looks even worse when the number of companies who actually issued options in a given year is examined. This number slumped from 370 companies who issued CSOP options in 2009-10 to just 290 last year. It was the same story in the table on the number of employees awarded CSOP options: a slump from 120,000 employees granted options in 2005-6, down to 35,000 in 20009-10 and down again to just 25,000 employees in 2013.

If CSOP usage falls any further this and next year, its raison d'etre will again be questioned by the government of the day.

Nevertheless, the Centre will fight tooth and nail to preserve CSOP because, in the words of Centre chairman Malcolm Hurlston CBE: "Only through the CSOP can the low paid and part time workers be effectively introduced to employee share ownership. We shall be pressing all parties to see its merits and allocate resource to encouraging its use"

The total value of shares and options awarded through the four approved employee share plans – Company Share Option Plan (CSOP), Enterprise Management Incentive (EMI), Save As You Earn (SAYE), and Share Incentive Plan (SIP) – in 2012/13 was £2.85bn, seven percent higher than in 2011/12.

The report found that 3,580 companies were granted options or shares via the four HMRC approved schemes in 2012/13. The number of employees exercising options in 2012/13 rose by 23 percent since 2011/12, following declines over the period from 2006/07 to 2010/11.

The total cost of income tax and National Insurance contributions (NIC) relief in 2012/13 for all four employee share schemes was £840m, which was 45 percent higher than in 2011/12. However, this was largely due to an increase in the value of income tax and NIC relief on gains achieved when SAYE scheme options were exercised.

Industry consolidation

Equiniti Group, a leading UK financial and business services provider and the UK's largest provider of shareholder services to FTSE 100 companies, has exchanged contracts to acquire **J.P. Morgan Cazenove's** corporate dealing services business for an undisclosed sum.

The acquisition is expected to be finalised by August 31, said Equiniti.

"J.P. Morgan Cazenove provides dealing services for participants in all forms of share-based remuneration schemes and this transaction further increases Equiniti's presence in the UK market. As part of the agreement, J.P. Morgan will partner Equiniti to continue to provide this service to its corporate broking clients," Equiniti explained.

Mark Vanderpump's team will leave Bank Street and relocate to the Equiniti Minster Court offices in the City once the deal goes through. They will set up as a separate unit within Equiniti and will continue to use the J.P. Morgan trading desk and share the same platform as Equiniti Premier Services. The corporate dealing business will transfer to Equiniti's Investment Services division, which was established more than a decade ago and holds in custody £17bn of customer assets.

Equiniti already manages the share registration needs of around half the FTSE 100 companies and has been buying businesses in the employee share schemes sector during the past three years. In 2011 it acquired the share dealing services business of NatWest Stockbrokers and last year it acquired Killik's Employee Services business, a market-leading provider of employee and executive share plan services. Paul Matthews, Equiniti corporate markets md, said: "The acquisition of J.P. Morgan's Corporate Dealing Services business further strengthens our position in this sector. All the current staff will transfer to our head office and their skills, experience and knowledge will be an important addition to our team."

Esop quarterly index blip

Unusually, the Esop index (the FTSE calculated Employee Ownership Index) fared worse than the FTSE All-Share in the second quarter of 2014, according to statistics released by the Centre in London.

In the three months ending June, the Esop index fell by 2.9 percent while the FTSE All-Share gained 2.2 percent. This followed seven successive quarters of out-performance. Measured over the first half of 2014, the Index is still up by 8.4 percent as against the All-Share's 1.6 percent gain.

The Esop index includes quoted companies which enjoy at least three percent employee equity ownership, as opposed to the FTSE All-Share, which covers companies with and without widespread Eso. At the end of June the Index stood at 768 (Jan 2003 = 100).

Introducing the survey results, Malcolm Hurlston CBE, Centre chairman, said: "*Employee share ownership is a reality, not a fairy tale. The line will not go up every quarter in the real world. But the longer term outperformance remains clear: companies who take employee share ownership seriously are bound to do better over time than shorter sighted rivals.*"

The Index is produced by **Capital Strategies** and calculated by **FTSE International**, a subsidiary of the London Stock Exchange Group. It includes companies with more than three percent employee ownership (excluding directors). LSE ceo Xavier Rolet said the new Index "highlighted some of the key benefits of encouraging employees to take an active interest in the future success of the companies in which they work." Nigel Mason of Capital Strategies said: "Most investors would accept that strong employee engagement is good for performance. Responding to demand for an investment fund to track the index, Capital Strategies is developing an open ended investment company which should be launched later this year."

Mike Ashley pulls out from equity bonus scheme

The founder of sportswear retailer **Sports Direct**, Mike Ashley, withdrew suddenly from the company's 2019 bonus scheme. The surprise about-turn came about after executives had made strenuous efforts recently to persuade shareholders to approve the controversial deal. Mr Ashley said he would not approach shareholders again regarding his remuneration during the lifetime of the new scheme.

Up to 3,000 full-time employees will still share in the £200m equity bonus scheme, but only if profits double by 2019. The company had refused to say how much of this would be allocated to Mr Ashley, who does not take a salary from the firm which he founded and in which he holds a majority shareholding. This apparent lack of transparency had annoyed the investing institutions.

Keith Hellawell, non-executive chairman of Sports Direct, blamed recent "unhelpful speculation" surrounding Mr Ashley's potential share allocation for his decision to withdraw. He said that Mr Ashley - who is the owner of Newcastle United FC - was "determined to ensure that there is the maximum number of shares available for the eligible employees." The Institute of Directors had criticised the bonus scheme proposal ahead of the recent vote saying it had significant concerns about Sports Direct's corporate governance. Some leading investors had threatened to vote against the re-election of the chairman and other board members at September's agm in protest at the new share bonus scheme - pushed through at an egm by the narrow margin of a 60 percent positive vote. Shareholders unhappy about the deal had been planning co-ordinated action through the Association of British Insurers' (ABI) investment committee and the National Association of Pension Funds (NAPF). Sports Direct reported a record 15 percent rise in annual pre-tax profits to £239.5m for the year to April 17 2014. Total group sales rose almost 24 percent to £2.7bn, from £2.1bn a year earlier. Like-for-like sales - which strip out sales at stores open for less than a year - were 10.5 percent higher. This was Sports Direct's third attempt to line up a big payout for its billionaire founder and deputy chairman, who owns 58 percent of the company. Only a year ago, Sports Direct announced that its EBT had placed 17m shares at 660p after staff decided to cash in their share bonus awards immediately after vesting. The 17m shares represented the vast majority of the 21m awarded to 2,000 staff as part of a 2009 bonus scheme. Employees earning a £20,000 annual salary received pay-outs worth £79,000 on the basis that they had received 12,000 shares each.

SAYE bonus rate re-instated

A bonus rate is re-appearing for five year SAYE-Sharesave schemes for the first time in more than three years. A rate of 0.6 times monthly contributions and an annual equivalent rate of 0.39 percent will be applied to new five-year SAYE schemes from July 28 2014. Employees in SAYE schemes will be entitled to the bonus rate on their total contributions when they have completed 60 monthly contributions. Employees in existing five year SAYE schemes will not be affected by the changes. The bonus rates for three-year schemes remain unchanged.

Martyn Drake, md at **Computershare Plan Managers**, said: "HMRC's re-introduction of a bonus rate for five year SAYE plans is good news for employees. This, coupled with the 20 percent option discount, savings limit increase and favourable tax treatment, should see an increase in the number of employees taking out a five year contract to aid long term retention. However, even without the recent changes, SAYE plans remain ever popular with employees, as more than 1.2m employees continued to save in SAYE plans over the past year. Phil Ainsley, **Equiniti** employee services md, said: "The Sharesave bonus rates are automatically adjusted by linking them to average three and five year swap rates. Recent announcements from the Bank of England's Monetary Policy Committee and speculation about when interest rates will go up is reflected in current rising swap rates, triggering a rise in the Sharesave bonus rate. Since the start of the new tax year, 87 percent of Sharesave launches have raised the monthly savings limit and participation levels have risen significantly. I see this as positive news for organisations offering Sharesave as an attractive employee benefit that will increase participation and generate higher levels of engagement."

On The Move

"On August 10, Tom Hicks, Paul Rowe and I are riding in the Prudential RideLondon – Surrey 100," writes Peter Mossop, director of executive incentives at Jersey based **Sanne Group.** "This is a one hundred mile cycling challenge which starts in the Olympic Park in London early on the Sunday morning. 24,000 riders will set off at 6am and will follow a 100-mile route on closed roads through London and Surrey - with leg-testing climbs including the infamous Box Hill and Leith Hill - on a route made famous during the London 2012 Olympics. The event finishes on The Mall in central London. We have set ourselves a target of less than seven hours, which is some (long) way short of the time set by the Olympic cyclists but will be a testing challenge for what I would best describe as enthusiastic amateurs like Tom, Paul and me. As many of you may know, this is something that I have been planning for a while and we have been having a laugh about the training and the very concerning 'lycra trajectory'. None of us have ever ridden 100 miles on a bike in one go, let alone in six hours. The longest distance we have achieved so far is 75 miles on a training ride this weekend. We have two more long training rides scheduled before the event and are banking on an infusion of energy gels at the 80 mile station on the actual event to spur us on for the final 20 miles to finish in good time, if not in good style!

"We are riding this year for our chosen charity **Children in Crisis** (*www.childrenincrisis.org*). This is a really special, small charity which is dedicated to improving the lives of children in post conflict zones long after the foreign forces and media teams have gone. It is a charity supported for some years by the Sanne Charitable Trust (*www.sannegroup.com/charitable-giving*) and staff chose it as our main charity for 2014. We have already run several initiatives to raise money for it and have supported it with a dedicated project to provide safe water and basic sanitation facilities for remote schools in Liberia. Children in Crisis has not set out to change the world but is dedicated to helping vulnerable children in post conflict zones in a way that is meaningful to them and we are delighted to be able to ride for them this year. In addition to the personal challenge, we have also set ourselves a fundraising target of £5,000. We have made a really good start to reaching that target and we hope to burst through it convincingly. We have raised just over £3,400 form a few fun initiatives that we have run so far. If you would like to sponsor us for what we believe is a really worthy cause to help a few children with so much less than we can begin to imagine, you can make a donation, however small, via our *Justgiving* page at the following link: *www.justgiving.com/Tom-Peter-Paul*. We will be doing a post event follow-up to let you know how we get on and no doubt there will be a few embarrassing pictures of us panting up Box Hill. Thank you so much to everyone who has already supported us."

Centre member **MM&K** celebrated its 40th birthday at a champagne reception in the gracious surroundings of City of London club. Directors - executive and non executive - including Nigel Mills, Chris Weight and David Henderson entertained a happy group of clients and guests indoors and out as the balmy summer weather gave its own welcome. The firm launched at the same time as the second edition of Chris Weight's *Directors' Remuneration Handbook*. Centre participants Graham Muir of **Nabarro** and Paul Randall of **Ashurst** were prominent among the guests.

The recent Cabinet reshuffle saw **David Gauke MP**, a former Centre Awards Dinner guest of honour, promoted from Exchequer Secretary to Financial Secretary to the Treasury. He replaces Nicky Morgan, who is now Secretary of State for Education. Mr Gauke keeps his previous responsibilities for tax and tax policy and takes on a new EU-wide tax role, including deputising for the Chancellor at ECOFIN. **Priti Patel MP** replaced David Gauke as Exchequer Secretary. Her responsibilities include oil and gas, charities, tax credits and environmental taxes. **Andrea Leadsom MP** remains Economic Secretary with responsibility for the financial sector and debt management. Former business minister **Michael Fallon MP**, who played a major role in the privatisation of Royal Mail, was promoted to the Cabinet post of Defence Secretary. He is replaced by **Matt Hancock MP**, who has been promoted to Minister of State at the Department for Business, Innovation and Skills.

YBS Share Plans announced the appointment of Teresa James and Michelle Merola to its share plans team. "Both Teresa and Michelle bring a wealth of experience gained from their extensive careers within the share plan industry and will be working with myself and the team focusing on business development," said Louise Drake, YBS Share Plans National Sales Manager. Teresa joins YBS Share Plans from **Tesco**, where she primarily managed the group's All-Employee Plans - including UK and Irish SAYE schemes, a UK SIP and an Irish Approved Profit Share Plan - as well as managing the shares section of the Group's Total Reward Statement. She said: "I am delighted to be given the opportunity to be part of such a vibrant and welcoming team and look forward to sharing and developing my share plan knowledge further." Michelle has had extensive experience within the share plan market, having worked within the financial services sector for UBS AG, Barclays and more recently Standard Chartered Bank. Her experience covers both the all-employee and discretionary share plans from an in-house and outsourced perspective. On her appointment, Michelle said: “I am delighted to be joining the team at such an important stage of the Society’s development, with many new initiatives coming on stream.” Teresa and Michelle’s contact details are: TEJames@ybs.co.uk / MMerola@ybs.co.uk

Well served

Almost 1,000 UK-based **Interserve** employees made an average profit of £1,447 after the organisation’s three year SAYE scheme matured on July 1. This profit arose from a rise in the option share price from 231p to around 611p. More than 2,000 employees have signed up for the 2014 three year SAYE scheme, which is administered by YBS Share Plans.

Tesco won *Best Employee Share Scheme* at the *Employee Benefits Awards 2014.* The judges said that Tesco’s range of share schemes was designed to be as inclusive as possible, enabling employees to save from as little as £1.25 a week. It was the first employer to receive HMRC approval to automatically register employees to receive free shares under the terms of their employment contract. Staff who do not want to take part can opt out. Employee feedback plays a big role in evolving Tesco’s share scheme design. The judges said: “Using a minimum contribution to drive up engagement was really impressive. Collecting £1 from weekly-paid staff is a big ask. There was strong innovation on design as well as communications. We liked the way it is challenging itself to include share information with its financial results; this makes for a good joined-up strategy.” Tesco said: “We took an innovative approach to our communications. We looked at our design to make it more engaging for employees. On maturity, we added extra options for employees.” The runners up were: Asda Share Schemes, Marks and Spencer Sharesave 2013, Partnership Assurance and the Whitbread Sharesave Scheme.

CONFERENCES

AWARDS DINNER: October 30 2014

The ESOP Centre’s annual awards dinner brings together over one hundred employee equity professionals - representing UK and international plan issuer companies and their expert advisers - to recognise the best in employee share ownership. This highly enjoyable black-tie event is the perfect way to celebrate the achievements of the year with clients, colleagues and peers. The dinner will be held on Thursday October 30 in the splendid setting of the Royal Air Force Club (London W1).

The Centre wishes to thank **Ogier Corporate Services** for generously supporting the dinner.

The evening begins with a champagne reception, followed by a three-course meal, guest of honour speech and award presentations. A winner will be announced for each of the three main award categories this year:

- Best international all-employee share plan in a company with more than 1,500 employees in three countries
- Best all-employee share plan in a company with fewer than 1,500 employees
- Best all-employee share plan communications

The award presentations will conclude by 10:00pm to ensure that guests with travel or family commitments are able to leave in reasonable time. Remaining guests are invited to stay on for post-dinner drinks.

Tickets are priced as follows (not including VAT):

	Member	**Non Member Plan Issuer**	**Practitioner**
Individual Places	£170	£185	£225
Table of Ten	£1,600	£1,700	£2,000

The dinner is once again expected to be a sell-out - to reserve your place, please complete and return the booking form (which can be found on the event webpage) by post, or email the Centre with the following details:

- Number and type of tickets required
- Name of company
- Name of contact person
- Company Address
- Telephone number
- Email Address

For additional information, or if you have any questions, please the Centre by email – esop@esopcentre.com – or call 0207 239 4971.

Event webpage: http://tinyurl.com/lasazvs

Ogier’s Performance & Reward Management Team brings a bespoke client experience to scalable incentive arrangements backed up by flexible system solutions that cater to all clients’ needs. For more information please contact:

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GUERNSEY: October 3 2014

The annual ESOP Centre / Society of Trust & Estate Practitioners (STEP) Guernsey seminar offers an excellent learning and networking opportunity for everyone with an interest in share schemes and employee benefit trusteeship. This year's seminar will take place at the St. Pierre Park Hotel, St. Peter Port on Friday October 3, from 9am-1pm.

Expert speakers will be sharing their knowledge and insight across a range of topics as part of this CPD accredited course:

*** Employee share schemes: the flexible solution to commercial challenges** (David Craddock, David Craddock Consultancy Services)

*** Consultation update - employee shareholding vehicle, marketable security and internationally mobile employees** (Stephen Woodhouse, Pett Franklin & Co. LLP)

***Funding share and share option awards: should companies change their policies?** (Mike Landon, MM&K)

*** The new Employee Ownership Trust** (Graham Muir, Nabarro)

*** Legal update for trustees** (Alison MacKrill, Carey Olsen & STEP Guernsey)

Visit the webpage at **http://tinyurl.com/qxlsu8p** for further programme details and to view speaker biographies. An additional presentation slot will be added in the coming weeks.

Registration opens at 8:30am and the presentations will take place 9am-1pm. Morning/mid-morning refreshments will be provided and the presentations will be followed by a networking lunch.

Attendance prices

ESOP Centre/STEP Members: **£295**

Non-Members: **£425**

To reserve a place, or for further information, please email esop@esopcentre.com with delegate names and contact details or call 0207 239 4971.

DAVOS: February 5 & 6 2015

Prospective speakers and conference sponsors should contact Centre international director Fred Hackworth asap to discuss the slots available for the Centre's 16th Global Employee Equity Forum, which takes place at the **Hotel Seehof** in Davos Dorf on Thursday February 5 and Friday February 6 2015. The four star Hotel Seehof is located less than 100 metres from the Parsenne Funicular and ski lifts. The Seehof contains a Michelin starred restaurant. The new deal obtained from the Seehof enables the Centre to *reduce* attendance prices next year, while maintaining the high standard of facilities and hospitality that members have come to expect from Davos. The smallest bedrooms we will offer in the Seehof will be 25m2. The Davos conference and accommodation package fees, on which *no sales tax is payable*, are:

Speakers

Service Providers: £**855** Plan issuers: £**575**

Centre member delegates

Service Providers: £**975** Plan issuers: £**645**

Non-member delegates

Service Providers: £**1,475** Plan Issuers: £**695**

The Davos 2015 package includes two nights' accommodation (February 4 & 5), breakfasts and lunches (February 5 & 6), admission to all conference sessions, entry to the annual cocktail party on Thursday evening, and a bound delegate handbook. There will be an optional pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. Contact Fred to register your interest in attending: fhackworth@hurlstons.com.

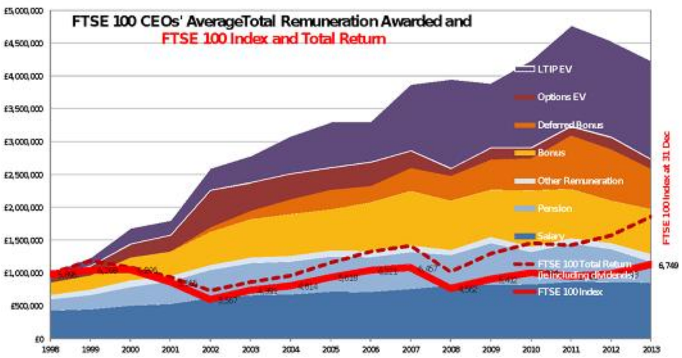
ROME: June 4 & 5 2015

The Centre's 27th annual conference will again take place at the **Residenza Di Ripetta** in central Rome on Thursday June 4 and Friday June 5 2015. This excellent hotel is part of the Royal Demeure Luxury Hotel group. A conference and accommodation package rate will be offered.

'Single Figure' accused of misleading investors

Centre member **MM&K** is urging Business Secretary Vince Cable to redraft the accounting definition of the 'Single Total Figure of Remuneration' due to concerns that it may be misleading. The Single Figure is now used in company annual reports to record senior executive reward rises. The concerns were raised following publication of the MM&K-Manifest *Annual Survey of Executive Pay*, which showed that top pay awards fell seven percent in 2013 after a five percent fall in 2012.

The new Single Figure tells a different story, said report author Cliff Weight of MM&K, showing a three percent rise in executive pay. The MM&K-Manifest survey uses 'Total Remuneration Awarded' (TRA) as its primary pay governance measure and not the Single Figure (or 'accounting for pay') approach.



"TRA measures the value of all remuneration awarded in the year including long-term incentive awards (the largest component of executive pay), for which it uses the expected value of the award," said Mr Weight.

"The accounting-based Single Figure of total remuneration dramatically understates the real amounts of remuneration that will be earned and should be revised. Its inconsistent treatment of executive pay is why MM&K/Manifest say the Single Figure is not a true and fair view of pay," he added. "We are therefore calling on the Business, Innovation & Skills Department to revisit and revise the Single Figure definition and:

- Include deferred bonus when it vests;
- Include option gains when the option is exercised; and
- Restore pensions-related disclosures."

The report shows too that the *Shareholder Spring* has clearly had an effect on remuneration committee thinking. This has been galvanized by regulatory intervention to reinforce investors' actions.

To order the survey email tracy.smith@mm-k.com or call 020 7283 7200. Price £750 for FTSE 350 companies; £500 for others.

Bonus Corner

Senior bankers could face bonuses being clawed back up to seven years after they have been awarded under new rules proposed by the Bank of England's **Prudential Regulation Authority** (PRA) and the **Financial Conduct Authority** (FCA). Andrew Bailey, the PRA's ceo, said this would mean bankers would be more accountable for their own actions. Regulators around the world are attempting to weed out bad behaviour by making individuals responsible for risky or illegal activity, rather than the institutions themselves.

Deferrals: The regulators are proposing lengthening the amount of time between a bonus being awarded and it actually being paid out. Currently, the majority of bonuses are paid between three and five years after being awarded. The regulators want to change this to a minimum of *seven years* for senior bankers, and five years for other bankers.

Claw-back: Banks will be able to claw back bonuses up to seven years after they have been awarded, even if they have been paid out. The PRA and FCA are proposing that senior bankers could have bonuses clawed back an additional three years after they have been paid out if the bank is under investigation or conducting its own inquiry into potential misconduct. This would, in effect, double the current claw-back period (from a current five year deferral period to a seven year deferral period and additional three year claw-back period).

Bailed-out banks: Lenders who have received taxpayer support have come under pressure over bonus payments, with very senior bosses requiring justification for bonus payments. Regulators want to beef up the "existing presumption against discretionary payments where banks have been bailed out" by making it explicit in the rules.

Buy-outs when individuals switch banks: When an employee switches banks, his or her new employer often 'buys out' any deferred bonuses that are forfeited by the individual leaving and pays it to them. It is believed this thwarts individuals' responsibility, because there is a shorter time-frame in which they can have their bonus clawed back. The PRA and FCA propose a number of solutions, such as banning buy-outs or ensuring they can still be clawed back.

Investors delivered a major image blow to fashion house **Burberry**, voting 52 percent against the ceo's reward package at the agm in London. Christopher Bailey, who took over as ceo in May, has a reward package worth up to £10m a year. The company admitted it was "a lot of money," but said the amount was justified to keep him in the business.

However, the vote is not binding and so the company will not be forced to change its policy. Mr Bailey has an annual clothing allowance of £440,000 on top of his £1.1m salary. On his appointment he was given free shares worth £1.8m, 500,000 performance-related shares currently worth £7m, and *golden handcuff* share options (a retention bonus) worth up to £19m over five years. Investors expressed concerns about the 1.35m shares he was allocated before becoming ceo, which had no performance criteria attached to them. In addition, Mr Bailey has a performance bonus worth up to 200 percent of salary and pension contributions worth 30 percent of salary.

In the meantime, Burberry said he could earn more than £10m a year over the next five years if the retailer hits its performance targets. Mr Bailey retained his position as ceo when he took over from Angela Ahrendts as ceo.

The 52 percent *no* vote was one of the biggest-ever protests staged by shareholders against boardroom pay in a FTSE100 company. Hitherto, only six of the UK's top quoted companies had suffered the humiliation of having their remuneration reports voted down at their agms. Insurer **Aviva** was one such company, with shareholders protesting in 2012 against a £2.2m *golden hello* for the incoming head of UK operations. The incident resulting in the departure of then ceo Andrew Moss.

"It was essential that we retain Christopher in the business", said Burberry chairman Sir John Peace. Bailey would only benefit from his share award if he stayed at Burberry for five years. Apart from the extra half million performance-related shares, Bailey had received no salary increase when he became ceo, said Peace. "We know that the amount paid to Christopher is a lot of money, but much of it is performance-related - which he will only receive if Burberry performs strongly. This will of course benefit shareholders," said Sir John. "We are acutely aware that he could command a much higher package outside of the UK," he added. Burberry's designs are still particularly popular in Asia.

The Investment Management Association (IMA) had issued an 'amber top' warning about Burberry's pay policy. This is the second most serious censure that the IMA, which represents the investment management industry, can give.

Euan Sutherland, who quit as ceo of the **Co-operative Group** after only ten months in the job amid a high-profile row over his remuneration package, is to receive a £1m payoff. The size of the sum, the equivalent of 12 months' basic salary, has angered some Co-op members at a time when the organisation plans to make up to 6,000 employees redundant. The Co-op insists such payments are routine. In a statement it said: "Euan Sutherland was on a 12-month notice period as group chief executive. When he resigned in March, the board did not feel it appropriate to ask him to work his notice period and exercised its right to put him on gardening leave, which is normal practice for a senior executive." But critics say Sutherland chose to quit and therefore should not be entitled to a year's salary for doing nothing. Sutherland left the Co-op in March after details of his £3.6m remuneration package – including a retention bonus equivalent to 100 percent of his salary for his first year in the post, regardless of performance – were leaked to the *Observer.* Grassroots members were also furious that several other senior directors brought in by Sutherland were handed near £1m salaries, plus equivalent retention bonuses. The co-operative's HR director, who asked to leave the business after only 12 months' service, was given a £2.5m payoff. Members were angry that the deals were agreed by the board but not shared with them. Shortly before his resignation, Sutherland took to Facebook to vent his frustration at the opposition to his remuneration scheme, claiming that someone was determined to undermine him personally. "I think that members will be appalled at this news of a further management stitch-up," said Peter Hunt, former general secretary of the Co-operative party and chief executive of **Mutuo**, a body that promotes mutual business to opinion-formers and decision-makers. "After the secret retention bonuses that made all of the executives into cash millionaires, we now hear that Euan Sutherland has been paid £1m just for quitting."

The controversy surrounding Co-op executive pay came after the group was brought almost to the brink when a £1.5bn black hole was found in its bank's balance sheet. Former chairman Paul Flowers pleaded guilty to possession of Class A drugs, including crack cocaine and ketamine. Sutherland, who will not be receiving a retention bonus, is credited with saving the Co-op from sliding into the abyss. "As ceo, Euan led a team that saved the Co-operative Bank and started the process of recovery within the wider group," the Co-op said. But his attempts to shake up the 150-year-old organisation angered many members while leaving many Co-op watchers unimpressed by their naivety. A plan to transform the organisation, produced by City grandee Lord Myners**,** echoed Sutherland's call to "modernise or die" and recommended a shakeup of the Co-op's structure. But the issue of executive pay continues to prove toxic.

Financial Conduct Authority (FCA) ceo Martin Wheatley banked £610,000 in the year to the end of March - down almost ten percent from £667,000 in the year before - after forgoing his bonus. The regulator took the decision not to pay bonuses to Wheatley and eight other members of its executive committee after the bungled announcement of an insurance sales review. A story leaked by the FCA to the *Telegraph* in March reported that it was intending to review the ongoing-management of insurance products sold from the mid-1970s. The story immediately wiped £3bn off the value of the sector, with the FCA not formally clarifying the more limited terms of the investigation until 14 hours after it appeared on the website. Wheatley's reward package included benefits in kind and pension contributions, with his basic salary rising £30,000 to £460,000. The median FCA salary fell slightly this year, from £64,301 to £62,616.

FirstGroup chairman John McFarlane pledged a "deep review" of the company's executive pay policies in the wake of criticism of the near-£2m package received by ceo Tim O'Toole last year. Although he said he believed Mr O'Toole's performance justified his latest package, he stressed that the terms of the ceo's contract had been set at the time of his recruitment when there had been other companies looking to attract him. "We are honouring decisions made in the past but my personal view is that what Tim achieved in the last 12 months was worthy of what he received," McFarlane told the company's agm. Three separate pay advisory bodies had said FirstGroup's remuneration report should be rejected and questions were raised by a number of shareholders at the meeting. More than 25 percent of shareholder votes were against the latest remuneration report, although the figure was down on last year's total of around 30 percent opposed. McFarlane promised shareholders the company's pay policies would be "fully reconsidered" under a reconstituted remuneration committee led by former Sainsbury's HR director Imelda Walsh and that major investors would be fully consulted. The revolt followed an 86 percent leap in the amount O'Toole took home for the last financial year. The Institutional Voting Information Service (IVIS), which used to be run by the ABI, issued an 'amber top' warning ahead of FirstGroup's agm, while the Pensions & Investment Research Consultants (Pirc) recommended that shareholders oppose the company's remuneration policy. An amber top flags a significant issue which needs to be considered by shareholders. ISS, the US corporate governance adviser, said the group's remuneration report was not without concerns, although it recommended that investors wave through FirstGroup's remuneration report. Mr O'Toole's pay was the subject of a fierce attack by Thomas Sandell, the US activist investor who owns 3.1 percent of FirstGroup. He wrote to FirstGroup's new chairman, John McFarlane, claiming that Mr O'Toole was the "highest paid ceo among his peers" and yet during this five year period FirstGroup shares are the worst performing shares in its peer group, having returned -8 percent compared to +23 percent for its peers, an underperformance of 239 percent." The FirstGroup chief, who has been under intense pressure since the company went cap in hand to shareholders for £615m in May last year, received almost £2m in pay, benefits and bonuses for the year to March 31, up from around £1.1m previously. His pay packet was bolstered by a controversial retention share bonus, which was agreed several years ago but was triggered on November 1 last year.

The ceo of **HMRC** said she "deserved" a bonus worth up to £20,000 last year, despite overseeing a £1.9bn error that saw officials overstating the amount of extra revenue they were collecting. Lin Homer said she should keep a bonus worth between £15,000 and £20,000, saying it reflected "a very good performance." It came on top of a £185,000 salary. She received the same bonus last year. Four other executives earning more than £120,000 took home bonuses worth between £5,000 and £15,000, according to the latest HMRC accounts. The executive bonus pool of up to £70,000 was higher than last year's of £55,000. This was despite HMRC admitting it had set a target for tax collection too low, meaning officials claimed to have over-shot their goal by £2bn when in fact the increase was merely £100m. MPs said the public had been misled by the "worrying" mistake.

In 2011, **JD Sports** decided it wanted to keep hold of executive chair Peter Cowgill at least until March 2014. It set up a special retention scheme bonus scheme, which pays out if profit targets are met. In the year to January 2014, £1.7m was paid to Cowgill under the scheme, thereby boosting his remuneration package to £3.1m.

Network Rail senior executives are on track for bonuses worth thousands of pounds a year just days after the company was fined £53m for poor punctuality and missing key targets. Unions reacted with fury after Network Rail's 'members' - the equivalent of shareholders for a company that is a not -for-dividend firm - voted overwhelmingly in favour of a new bonus scheme for the top executives, prompting a 'fat cat' pay row. The new bonus scheme is less generous than the old scheme it replaces, but ceo Mark Carne and his fellow senior executives could still get up to 20 percent of their annual salary in annual bonuses should performance targets be reached.

Tim Steiner, ceo of the online supermarket **Ocado**, saw his remuneration package more than double. A 109 percent rise took him past the £1m mark for the first time since Ocado floated on the LSE in 2010.

A row is brewing over the potential departure package for **Tesco** ceo Philip Clarke, who has resigned and will be replaced by Dave Lewis of Unilever. Some leading shareholders are concerned that Mr Clarke will be paid his full £1.15m salary for another six months and then receive 12 months' salary and benefits worth £1.2m on his departure in January. This would mean he receives 18 months pay in total after his exit was announced, compared to the City standards of 12 months. Shareholders are understood to have questioned Tesco over the pay-off. One major investor said: "People get paid for delivery, not for not delivering." Sarah Wilson, ceo at shareholder advisory group **Manifest,** said: "This is generally frowned upon. Investors expect to see any termination payments capped at 12 months. Is this some sort of settlement? It is unusual. People will jump to conclusions in the absence of an explanation." In addition, Mr Clarke is entitled to a series of share awards, but many of these are underwater and the remaining £2.7m will remain subject to performance targets. Former Tesco cfo Laurie McIlwee is in line to collect a £970,800 *golden goodbye* when he leaves the supermarket chain this October after six months with the unusual job title of 'cfo emeritus', said the *Labour Research Department.* McIlwee will continue to collect his salary of £886,420 plus a potential bonus worth double his pay for the six month period. Tesco said McIlwee would receive a payment on departure because he had left by mutual agreement. Alan Stewart will join the Tesco board as new cfo.

The two top executives at **William Hill** had huge reward increases in the last fiscal year - finance director Neil Cooper a 243 percent rise and ceo Ralph Topping a 159 percent rise. The increases came about as their performance share plans (PSP) paid out massively against smaller annual bonuses the year before. Topping received £4.1m from the PSP taking his total remuneration to just under £5m a year, while Cooper received a £2.6m payment taking him to just over £3m a year.

Pay levels across the whole economy have slowed down again. Average wages in March to May including bonuses were just 0.3 percent higher than a year ago. Average wage rises excluding bonuses rose in that time by 0.7 percent, the lowest rise in recent memory. Between January and March, annual wage growth stood at 1.9 percent, but has plunged since then. The latest figures show wage rises including bonuses are at their lowest since 2009, while excluding bonuses average wage increases are their lowest since 2001. Commenting on the Labour Market Statistics for March to May 2014, released by the **Office for National Statistics** (ONS), Mark Beatson, chief economist at the **Chartered Institute of Personnel & Development** (CIPD), said: "These statistics highlight a continuation of the recent pattern of strong employment growth, especially for young people, and very low pay growth. *The latest wage growth figures could be an unusually low one-*

off but, even if they are, they remind us that there are no signs of pay pressures building up in the official figures. This is no surprise when labour productivity growth is flat and when the government's welfare reforms, the availability of EU migrants and the latent supply from the under-employed mean we have strong growth in labour supply. It is very difficult to see where the pick-up in wages growth will come from."

New wage settlements recorded a median two percent increase in the three months to the end of May 2014, said pay specialists **XpertHR**. This marked a fall from the 2.5 percent median increase recorded in the first three months of the year. The whole economy figures for April were heavily influenced by a couple of key sectors that typically set pay awards around this time of year. Further analysis revealed that:

- private-sector pay awards are worth two percent at the median, the same as the whole economy figure;
- 14 percent of groups have had pay frozen;
- pay settlements in the public sector were centred around one percent.

Meanwhile, retail price inflation rose sharply to 1.9 percent in June.

The **High Pay Centre** (HPC) urged the government to cap executive pay after a new report found it had grown to nearly 180 times the average employee since the late 1990s. More radical action was needed if the gap between the UK's top bosses and everyone else was to return to more proportionate levels, it said. The left-leaning HPC said that its polls suggested 78 percent of the public would support a relative cap on executive pay. This would imply the fixing of a maximum ratio between the amount a company rewarded its executives and the average (or even lowest) annual sum the company paid its ordinary employees.

Shareholders gained new powers last year, including the chance to vote down executive pay policy at company agms if they thought the proposed package was too large. **PwC** analysis of early reporting has shown that FTSE 100 executives have seen their bonuses fall for the third year in a row. Nearly a quarter have had their basic pay frozen. Business Secretary Vince Cable still has potential measures available to curb 'excessive' executive pay, such as the requirement to consult employees, putting an employee on company boards and even compulsory profit-sharing.

Centre gives evidence at EU-sponsored workshop

International director Fred Hackworth and William Franklin, partner at Eso lawyers **Pett, Franklin & Co. LLP**, gave a Centre presentation on UK examples of Eso boosting economic growth when they addressed delegates at a European Commission sponsored workshop in Milan. Fred outlined the success of state spin-off mutuals, such as Aspire Sussex, Central Surrey Health Care (CSH Surrey) and City Health Care Partnership (Hull), which are now owned by their employees. Staff initiative had been harnessed, engagement, morale and productivity were higher and cost savings had been achieved through adopting better business practices. However, transition problems included lack of effective communication (e.g. about staff pensions), not being on a level playing field for government contracts and confusion about the transfer process. William gave an overview of broad-based Eso participation, including the use of EBTs for direct and indirect employee share ownership. Approved share schemes in unquoted companies were still comparatively rare, William explained, for several reasons: many larger unquoted companies were backed by private equity and so failed the independence test; many owners were either ignorant of Eso, or reluctant to share equity with employees; and it remained difficult for employee shareholders in unquoted companies to realise their investment.

Zero Hours exclusivity contracts to be banned

Business Secretary Vince Cable announced plans to ban exclusivity clauses in zero hours contracts that prevent casual employees from working for another company. Zero hours contracts themselves will not be banned. Mr Cable said that zero hours contracts: "Offer valuable flexible working opportunities for students, older people and other people looking to top up their income and find work that suits their personal circumstances. However, it has become clear that some unscrupulous employers abuse the flexibility that these contracts offer to the detriment of their workers." The Department for Business, Innovation and Skills (BIS) said that the ban should allow 125,000 employees who are bound by exclusivity clauses to seek extra work.

MyFerryLink in the dock

Cross Channel rail operator **Eurotunnel** has been banned from operating a ferry service it started two years ago. The Competition and Markets Authority (CMA) confirmed an earlier decision that the company should not run its **MyFerryLink** service from Dover. The staff on board MyFerryLink's ships are members of a workers' co-operative – the French acronym is SCOP – that operates the company's sailings between Britain and France. The CMA said that current competition on the ferry route was unsustainable. MyFerryLink said it disagreed with the CMA and would appeal. Sailings would continue beyond summer, it added. CMA claims jurisdiction over Eurotunnel's move to buy three ferries that had belonged to the former **SeaFrance** operation. It said two other Dover-Calais operators were making losses and any exit of a competitor would leave My FerryLink as one of only two ferry operators, in addition to the competing rail link. Eurotunnel's purchase of the ferries meant it had more than half the market and its share could still rise. MyFerryLink said that the CMA had no jurisdiction to review the transaction as a matter of UK merger law. It said the CMA's decision would reduce choice and was bad for consumers, competition and all involved in Cross Channel operations - including staff, customers and Dover and Calais. "Given that any appeal is unlikely to be finally determined until much later this year at the earliest, we would like to reassure our loyal customers that we will continue to operate our full schedule throughout the summer season and beyond," MFL added. Around 600 jobs are at stake.

A 2014 report by **Fidelity Investments** found that 40 percent of polled employees say that a company stock plan is a 'must-have' when considering a new job, reported the US based **National Center for Employee Ownership** (NCEO). The vast majority (86 percent) of workers 40 years old or younger say that would want a prospective employer to offer company stock, and ten percent of respondents rank company stock plans as more important than health care and 401(k) plans. A majority of respondents say that company stock increases their company loyalty and encourages them to work harder (54 percent and 57 percent, respectively). Kevin Barry, vp of stock plan services at Fidelity Investments, said the study's results indicate that "today's workers increasingly understand that a company stock plan is a great savings option to complement their traditional workplace savings plan."

FATCA and trustees

Jersey and Guernsey have signed Inter-Governmental Agreements (IGAs) with the US Government to ensure compliance by local financial institutions - including trustees of share plans and pension plans - with the US Foreign Account Tax Compliance Act (FATCA).

Under the IGAs, information on distributions to US taxpayers will be sent to the US IRS via the Jersey and Guernsey tax authorities. Jersey and Guernsey have signed similar agreements with the UK concerning UK taxpayers. Both US and UK FATCA took effect on July 1 this year. Centre member **RBC cees** said that it has registered its trustee entities with the US IRS to ensure full FATCA compliance. FATCA reporting applies when a single or aggregated distribution of more than $50,000 (or currency equivalent) is made to a US or UK taxpaying plan participant. The reporting is required in respect of:

- International Pension Plans (IPPs): the annual value of the participant's account post pension payment(s) and the value of the payments made to them each year from year two onwards;
- International Savings Plans (ISPs): the value of the lump sum distribution made to the participant;
- Employee Benefit Trusts (EBTs): the value of the distribution made to the participant;
- Share plans: the value of shares distributed, whether in share or cash form.

The trustee is responsible for reporting the relevant information. The approach taken will depend on the agreement the trustee's location has with the reporting authorities.

Trusts established in the Channel Islands report to the local authorities, who then report to the US and UK authorities under the terms of the relevant IGA. UK trusts report directly to the UK authorities. No registration is needed for UK FATCA.

At distribution, participants will need to supply more information to the trustee so that it can carry out the FATCA reporting. For example, for pensions and savings plans, participants will need to provide a completed self certification form, and, in the case of US taxpayers, also a Form W9 before they can receive their benefits.

"The OECD has issued a Common Reporting Standard which a significant number of countries are looking to adopt. Therefore, we are likely to see this type of information exchange increasingly becoming the norm around the world," added RBC Cees. The Centre is a member of the OECD's Business Advisory Group.

Presumption of prudence in Esop fiduciaries axed

The US Supreme Court recently released a key decision concerning tax-qualified retirement plans known as employee stock ownership plans (Esops), reported US lawyers **Squire Patten Boggs**. The case is *Fifth Third Bancorp et al v. Dudenhoeffer et al*., No. 12-571, June 25 2014. The Department Of Labor sued GreatBanc Trust Company (GreatBanc), the trustee of the Sierra Aluminum Company's Esop, claiming that GreatBanc relied on a flawed appraisal report to support the Esop's purchase of 3.4m shares of company stock for $53m. The DOL claimed that GreatBanc: failed to adequately question an appraisal that presented unrealistic and aggressively optimistic projections of the company's future earnings and profitability; failed to investigate the credibility of the assumptions, factual bases, and adjustments to financial statements that went into the appraisal; and asked for a revised valuation opinion in order to reconcile the higher purchase price the trustee agreed to pay with the lower fair market value of the company stock determined in earlier versions of the appraisal.

So, if an ERISA breach of fiduciary claim is filed against an Esop trustee (or other plan fiduciary), the fiduciary no longer has a 'special presumption' that the holding of, or purchase of, employer securities is or was prudent. This will make it much harder for a fiduciary to get that type of claim dismissed quickly (based solely on the pleadings). Thus, this ruling is likely to lead to lengthier, more costly litigation in regard to these types of claims. Nevertheless, subsequent parts of the Supreme Court's ruling could be viewed as a bit more favourable for Esop fiduciaries. In an attempt to provide a framework for the early dismissal of meritless fiduciary claims against Esop fiduciaries, the Court stated that a complainant must plausibly allege an alternative action that the fiduciary could have taken, where a prudent fiduciary would not have viewed that action as more likely to harm the Esop than help it. The Court gave the following guidance:

- If a stock is publicly traded, allegations that a fiduciary should have recognised on the basis of publicly available information that the market was overvaluing or undervaluing the stock are generally implausible, and thus insufficient to state a valid claim against the fiduciary;
- If a fiduciary is in possession of non public information, the fiduciary is never required to act on, or to otherwise disclose, that information in a manner that would violate insider trading or other securities laws;
- A fiduciary may have to consider whether any actions it may take in relation to ceasing employer stock purchases, and/or selling employer stock, might actually harm the Esop via market adjustments.

The Department Of Labor and GreatBanc agreed to settle the case for $5.25m, reported US lawyers *Bradley Arant Boult Cummings*. Significantly, as part of the settlement, GreatBanc agreed to implement specific policies and procedures whenever it serves as a trustee or other fiduciary of an Esop regarding transactions in which the Esop is purchasing or selling, or is contemplating purchasing or selling, employer securities that are not publicly traded. The policies and procedures are very detailed, highly proscriptive, and - in several cases - go beyond explicit requirements under the law. The policies and procedures that GreatBanc agreed to include:

- Selection and use of a valuation advisor. GreatBanc is generally required to hire a qualified valuation adviser, investigate the adviser's qualifications, and prudently determine that it can rely on the adviser before agreeing to the transaction. GreatBanc cannot use an adviser for a transaction that has previously performed work for the Esop sponsor (as distinguished from the Esop), any counterparty to the Esop involved in the transaction, or any other entity that is structuring the transaction (such as an investment bank). GreatBanc is generally prohibited from using an adviser that has a familial or corporate relationship to itself and other transaction parties.
- Most significantly, in selecting an adviser for a transaction involving the purchase or sale of employer securities, GreatBanc has to prepare a written analysis addressing specified topics, such as the reason for selecting the particular adviser. GreatBanc has to oversee the valuation process and make sure the adviser documents certain required items; if the adviser does not do so, GreatBanc then has to prepare supplemental documentation addressing a number of matters relating to the analysis.
- GreatBanc must request that the company provide GreatBanc and its valuation adviser with audited unqualified financial statements prepared by a CPA for the preceding five fiscal years, unless financial statements extending back five years are unavailable. In the absence of such audited financial statements, GreatBanc is required to take certain steps before proceeding with the transaction, including additional documentation of why it has chosen to proceed.
- GreatBanc must follow a specified process and document the valuation analysis. GreatBanc's reliance on an appraiser's valuation report is contingent on taking certain steps and providing certain documentation. If the valuation report is not consistent with the analysis, then GreatBanc must not proceed with the transaction. Again, the trustee is required to document its analysis of such issues.
- GreatBanc cannot encourage an Esop to purchase employer securities for more than their fair market value or sell employer securities for less than their fair market value. GreatBanc specifically agreed not to require an Esop to engage in a leveraged stock purchase transaction in which the principal amount of the debt financing the transaction exceeds the fair market value of the stock acquired with that debt, irrespective of the interest rate or other terms of the debt used to finance the transaction.
- In evaluating proposed stock transactions, GreatBanc is required to consider whether it is appropriate to request a clawback arrangement or other purchase price adjustments to protect the Esop against the possibility of adverse consequences in the event of significant corporate events or changed circumstances. GreatBanc must record in writing its consideration of the appropriateness of a clawback or other purchase-price adjustments.

These policies and procedures, in many ways, go beyond the stated requirements in law and demonstrate regulatory overkill. For example, while an Esop trustee may ordinarily choose to document the retention of a particular appraiser, these policies and procedures impose stricter requirements including a written analysis of the reasons supporting the selection of a particular appraiser, which in all likelihood go beyond the customary practice for most trustees. Further, the requirements of the various written reports by the trustee, as opposed to the appraiser, will surely result in much duplication of effort with the almost certain increase in expense for the plan sponsor. The inclusion of certain specified items for consideration, such as the possible use of a clawback provision, seems to be an attempt to implement an almost formulaic approach to what has historically been a holistic decision - whether the purchase of the stock of the employer on the terms in front of the trustee is in the best interests of the Esop participants.

Finance Bill receives Royal Assent

The 2014 UK Finance Bill received Royal Assent on July 17 and is now law, said Centre member **Deloitte.** It includes changes to the enterprise investment scheme and new measures on the taxation of co-operative societies and similar bodies. There are changes to the new social investment relief too.

Following representations, the Bill proposed significant amendments to the taxation of share awards for internationally mobile employees. The new rules will apply to all share vestings and option exercises occurring on or after April 6 2015 (irrespective of the date on which the award was granted). The legislation that applies to restricted share awards (broadly shares awarded to an employee where the shares are subject to a risk of forfeiture or a restriction on sale). Under current legislation, where restricted shares are awarded to an employee who is not resident in the UK (and assuming the award is not made in relation to/ contemplation of UK duties), there will be no UK income tax charge arising in respect of the award even if the employee has become UK tax resident at the point when the shares subsequently vest. Awards which vest after April 6 2015 will now be subject to UK income tax at the point of vesting. The amount liable to UK income tax will generally be based on the market value of the shares at vesting, as apportioned for UK workdays over the grant to vest period. Where the share award is subject to income tax at the time of grant in the 'home' country, the tax paid in the home location at grant could be deducted from the UK income tax payable at vesting.

Where an individual is subject to income tax in the home location at grant on the full value (the "unrestricted market value") of the shares, there will be no UK income tax due at vesting. An example would be where a US employee makes an s.83(b) election (broadly equivalent to a UK s.431 election).

If the participant was not subject to overseas tax at grant, or was only subject to overseas tax on a proportion of the value of the shares at grant and subsequently comes to the UK, UK income tax would still arise at vesting. This latest amendment to the taxation of restricted stock for internationally mobile employees will be a welcome development for companies and employees moving to the UK from countries that tax restricted shares at grant, said Deloitte. Without this change, the employee could have claimed a foreign tax credit in the UK at the time of vesting for any tax paid overseas at grant in relation to their award. However, even if the employee paid overseas income tax on the full value of the shares at grant, a UK tax charge could still have arisen at vesting if there had been share price growth during the vesting period. Companies must still ensure that they are able to meet their UK withholding obligations where there is a UK tax liability at vesting. This will be relevant in relation to participants moving to the UK from countries which do not tax restricted stock at grant or tax a discounted value at grant.

From April 2015, awards are taxed at vest if the employee is resident or working in the UK when restrictions or forfeiture provisions lapse - even if the employee was resident abroad at award. Double taxation may result if foreign income tax was charged on the acquisition of the restricted securities, e.g. in the US an s.83(b) election was made. This is now recognised by treating the amount subject to foreign tax at award as deductible in calculating the UK chargeable proportion of the vesting gain. If the full award value was taxed abroad, there is no further UK income tax charge at vest.

Pinsent Masons Roadshow

Centre member **Pinsent Masons** will hold share plan roadshows around the UK in September and October, where it will review recent developments in share plans and executive pay, share new thinking, and offer practical solutions to the UK and international issues many companies will be facing both now and over the next 12 months. For further information please contact Lisa Brook:

T: 0113 368 7624;

E: lisa.brook@pinsentmasons.com

The cost per delegate is £150 + VAT. The event qualifies for four hours towards the CPD requirements of a number of professional bodies.

Birmingham

Tuesday September 23 2014

3 Colmore Circus, Birmingham B4 6BH

Leeds

Wednesday September 24

1 Park Row, Leeds, LS1 5AB

Manchester

Wednesday October 1

3 Hardman Square, Manchester, M3 3HF

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