Vol 29 No 7 August 2015

it's our business

newspad of the Employee Share Ownership Centre

Glitch-hit ERS Annual Returns service restored

A major IT problem forced **HMRC** to delay the deadline for submitting online annual share scheme returns by almost one month.
HMRC has given the UK share schemes industry a new deadline of **Tuesday August 4** by which to submit the necessary forms to HMRC, in order to avoid automatic penalties - instead of the original deadline of July 6.
The Employment Related Securities (ERS) online filing service has been plagued by "technical difficulties," which forced an acutely embarrassed HMRC to postpone its penalty regime for non-returns. It took a fortnight for HMRC's technical division to repair the internal systems failure, which prevented many share plan issuers and their advisers from filing their online annual share scheme returns before the original penalty deadline.
It was not until July 20 that HMRC share schemes policy executive Colin Strudwick was able to announce that the online annual returns service was working. He said: "The service is now live. We apologise for any inconvenience caused to customers. As customers have been unable to file their annual return by the July 6 2015 deadline, we will extend the deadline for filing annual returns. If customers file their returns on or before Tuesday August 4 we will not charge a penalty. There is no need for them to contact HMRC."
However, as *newspad* went to press, it remained uncertain whether the share schemes IT nightmare was fully resolved, because HMRC was forced to admit that an ancillary problem – whether or not those who had filed their returns on or before July 3 would need to resubmit them - had surfaced. Mr Strudwick explained: "We have been asked whether customers who filed their returns on or before July 3 and received an on-screen acknowledgement might need to re-submit their returns. We are still investigating the potential impact on those customers. We will publish a further message about this in due course."
HMRC confirmed that the technical problems did *not* affect the online share scheme registration system, the return template checking service or online EMI option grant notifications, said **Baker & McKenzie**.
Those still in doubt should contact shareschemes@hmrc.gsi.gov.uk , or Mr Strudwick directly at: Share Schemes Policy, HM Revenue and Customs, Room G53 , 100 Parliament Street , London SW1A 2BQ. Telephone: +44 (0)3000 585275 Email: colin.strudwick@hmrc.gsi.gov.uk

From the Chairman

I would recommend all readers to join the UK Shareholders Association. This month's issue of its magazine The Private Investor contains at least two items of great and common interest. The first is a critical analysis of the remuneration report of Taylor Wimpey. The second is a letter from a reader who argues that bonuses and options are theft, other than to entrepreneurs. Seventy-five years ago they accounted for 10 percent of dividends. Now they gobble up 95 percent! We are used to passing off criticism from the Loony left. If that is what business insiders think, what can we expect from JC as PM? Meantime let us enjoy our sandcastles .

Malcolm Hurlston CBE

DAVOS 2016: Big ticket price cuts

Speaker slots are being awarded for the Centre's 17th winter conference, which will be held in **Davos,** home to the World Economic Forum, on **Thursday January 28** and **Friday January 29.**
A Davos programme committee, currently comprising: **Mike Landon,** a director of **MM & K**; **David Pett,** partner at **Pett, Franklin & Co. LLP; Kevin Lim** of **Solium UK; Malcolm Hurlston,** Centre chairman and Centre international director **Fred Hackworth** is considering potential topics. All of the above will have speaker roles at this event. Among the topics already selected to be examined in depth at Davos are:

- Why does employee share ownership (Eso) get such a lukewarm press in the UK?
- How can we bring more medium sized companies into broad-based Eso?
- Is regulation a big put-off for companies using or planning to use Eso?
- International share plans at work in Europe, Asia and the US
- Latest share and share option plan developments:

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 fax: 080 8280 1938 e-mail: esop@esopcentre.com
www.esopcentre.com

legal changes, communication techniques, technology & administration

- Employee shareholder powers – is share ownership enough?
- Trustees: offshore & onshore; duties & responsibilities
- Has the time come for quantum to be fixed in executive reward?
- Redefining performance criteria in executive equity plans

Prospective Centre speakers are invited to suggest their own ideas asap for slot topics and these will be relayed to the committee.

The Centre has obtained a remarkably favourable deal with the four-star **Seehof Hotel** in Davos Dorf, allowing us to **significantly reduce early-bird attendance fees** as compared to those in force last February. Our *early-bird* charges for the two nights half-board accommodation + conference + cocktail party package deal in the Seehof are: **Speakers**: practitioners **£825;** plan issuers **£399; Delegates:** member practitioners **£945;** plan issuers **£495,** non-member practitioners **£1450.** *No VAT is charged as the event takes place outside the UK.*

The Parsenn is the largest ski area in Davos, offering 35 top quality ski runs. The Parsennbahn funicular connects to a train and chairlift to the major lift junction of Weissfluhjoch – reached by gondolas from Klosters - from where you carry on up via a cable car to Weissfluhgipfel at 2,844m. It's a vertical descent of 1,300m back to Davos or, if you aim for Küblis, you'll get 2,000m vertical of continuous turns.

The **Seehof** contains three restaurants, one of which is **Michelin** starred.

Email Fred Hackworth now to reserve your speaker or delegate place or to suggest topic themes for this thought-leading annual Centre event: fhackworth@esopcentre.com with copy to the Esop Centre at: esop@esopcentre.com As usual, there will be an optional informal dinner for delegates in the Seehof on **Wednesday January 27**, the night before the conference starts.

IAG Aer Lingus bid, signals bonanza Eso pay-out

Almost 4,800 Aer Lingus employee shareholders, past and present, stand to gain windfalls averaging more than £20,000 when sale of the Irish airline to **IAG**, the holding company for BA and Iberia, is finally rubber-stamped.

The **Aer Lingus** employee share ownership trust (ESOT) which is estimated to hold around 12 percent of the company equity, will be wound up.

IAG's €1.3bn bid implies that past and present employees collectively will receive at least €160m (£114m) when Aer Lingus is gobbled up, now that both EU and US regulators have given the green light.

It's too soon to tell whether IAG will want to award the Aer Lingus employee shareholders a larger share stake in the 'mother' company than they otherwise would have got, once the takeover goes through, or whether the acquisition premium will be paid out in cash.

Aer Lingus ESOT once held 66.6m shares in the airline, though this holding may have declined somewhat in the past two years. The most recent shareholder records showed that, the Irish Air Line Pilots Association (IALPA) held an additional seven percent of the Aer Lingus equity. Senior Aer Lingus executives are set collectively to make at least £7m from the sale of their shares in the airline.

IAG bid €2.55 per share to acquire the Irish government's 25 percent in the airline, but the clincher came when **Michael O'Leary**, ceo of **Ryanair,** who bid unsuccessfully three times to takeover Aer Lingus, agreed to Ryanair voting its near 30 percent stake in Aer Lingus to IAG too.

The battle over the fate of Aer Lingus has been intensely personal as its former ceo Irishman **Willy Walsh** is not only a former ceo of the Irish flag-carrier, but flew its planes as a pilot too. Walsh quit Aer Lingus in a huff years ago because it wouldn't let him and other senior managers take control via a projected MBO. He and **O'Leary** are normally fierce rivals, but the latter felt threatened when a UK court recently upheld a competition authority ruling ordering Ryanair to dispose of all but five percent of its stake in Aer Lingus for competition reasons. In turn, the **European Commission** cleared the IAG bid for take -off after accepting IAG route concessions at Gatwick, to ensure that the bid would not breach fair competition rules. The US regulators at the **Department of Justice** swiftly followed suit.

Aer Lingus agreed in October 2010 to pay €25.3m to the ESOT to eliminate debts the employee group accumulated buying 15.5m shares following the flotation of the airline in September 2006. ESOT bought the additional shares in October that year for €2.20 each, in a 'poison pill' manoeuvre after Ryanair launched a hostile bid for Aer Lingus just days after it went public. ESOT and the government rejected the bid. The ESOT already held over 47m shares in the airline upon its flotation, while the total 66.6m shares it then controlled equated to about 12.4 percent of the airline. Aer Lingus management approached ESOT to make an offer to clear its debts and in return release the company from a demanding profit sharing agreement. At the time, chairman of the ESOT board, IMPACT union general secretary Shay Cody, said the trustees had delivered value for the employee shareholders.

Clinton praises profit-sharing & Eso

US Presidential Democrat front-runner **Hillary Clinton** said she'd like the federal government to encourage companies to offer profit-sharing plans to employees. "Hard-working Americans deserve to benefit from the record corporate earnings they helped produce. ... Studies show profit-sharing that gives everyone a stake in a company's success can boost productivity and put money directly into employees' pockets. It's a win-win," Clinton said in a Washington speech.

Other Clinton proposals ranged from curbing activist shareholders to further empowering workers, though she couched her proposals carefully, so as not to

alienate big business in the run-up to the US Presidential election next year.
Clinton called out excessive compensation packages for executives as part of the problem. "I'm all for rewarding ceos well when their companies prosper and their employees also share in the rewards," she said. "But there is something wrong when senior executives get rich while companies stutter and employees struggle." To address it, Clinton called for regulators to finalise the Dodd-Frank requirement that companies list the ratio of executive to worker pay, she proposed adjusting performance-based tax write-offs for executives to discourage moves designed to juice up share prices and she pitched mandating explanations for how executive pay packages serve the long-term interest of companies.
Her call for tax breaks for companies that share profits with its employees is a recommendation from the Center for American Progress (CAP), a Democratic think tank where a few of Clinton's policy advisers worked and whose president was a campaign aide in 2008. The tax breaks could be available if, say, the company contributes as much to the bottom 80 percent of employees as to the top five percent.
In a profit-sharing plan, only the employer makes contributions, which vary, depending on the company's profitability in a given year and may be tied to a formula based on an employee's salary. The money typically grows tax-deferred, as in a 401(k). The CAP recommended expanding tax breaks to companies that create employee stock ownership plans (ESOP), in which an employer typically contributes company stock to an employee's account, essentially giving workers an ownership stake in the enterprise. Mrs Clinton proposed extending from one to two years the period that top earners would need to hang on to an investment before seeing the 40 percent tax rate start to fall and she would lower the rate slowly, over a six year period, down to the 24 percent rate for longer-term investments — a tweak that she said would help refigure a system that's bent itself out of shape over the last few decades. Capitalism itself, she said, "needs to be reinvented, it needs to be put back into balance."Chris Van Hollen, top Democrat on the House Budget Committee, proposed restricting tax deductions that corporations may take on executive compensation over $1m but would allow a break if they provide their employees with ownership and profit-sharing plans that meet a given standard. Under current law, publicly traded companies may not deduct more than $1m in executive compensation unless it is performance-based - like a bonus for exceeding a given goal, said Steve Rosenthal, a senior fellow at the Tax Policy Center. If she wins, Clinton's options would be: 1. Increase tax incentives for incentive-based pay. Under the current tax code, some public companies are able to deduct some performance-based bonuses from tax liabilities. Congress could expand the tax benefits for incentive-based pay for workers by conditioning the deduction on the incentive-based pay being spread across all employees. 2. Boost the existing tax benefits of Esops. US based **National Center for Employee Ownership** says such plans are used by 7,000 companies with a total 13.5m employees, SMEs, as well as multinationals. Esops already receive tax advantages, depending on the form of company and plan. Under current law, contributions of new shares or cash to the trust fund are tax deductible, as are payments on loans used to buy the shares. Those tax benefits could be expanded to incentivise more companies to take advantage of them. 3. Set up a new office to promote employee ownership. Mrs Clinton drew her inspiration from the CAP's report on *'Inclusive Prosperity,'* co-authored by **Lawrence Summers, the former US Treasury secretary,** and **Ed Balls,** former UK shadow chancellor. It proposes several ways to encourage US companies to share profits more widely from outright employee ownership to more generous profit-sharing schemes. One way would be to alter the US tax code to allow companies to treat employee-shared profits as a business investment. The existing code only rewards targeted stock option and bonus schemes for senior executives. The report recommended federal loan guarantees to small businesses shifting to the employee ownership model and estate tax breaks that would encourage owners to bequeath their businesses to employees. There would be a federal office for inclusive capitalism.
*The **Bank of England**'s chief economist alleged that shareholder power is leading to slower growth. **Andy Haldane** told *BBC Newsnight* that business investment had been lower than was desirable for years. One reason was that a high proportion of corporate profits were being paid out to shareholders, rather than reinvested in the company. He said that in 1970, £10 out of each £100 of profits were typically paid to shareholders through dividends. Today, however, that figure was between £60 and £70. Mr Haldane argued that left far less cash available for growth-boosting investment and that firms risked 'eating themselves.' Corporate short-termism - a focus on immediate gains rather than long-term prospects - was a rising problem for companies and pre-dated the financial crisis, he said. Mr Haldane believes that one possible major cause of this short-termism is the nature of UK company law, which gives most decision making power to shareholders. The nature of shareholding had changed over time. In 1945 the average investor held a share for an average of six years, but that had now fallen to just six months. These lower holding periods mean that the people charged with making decisions may have less interest in the long-term health of the companies they invest in.

New all-employee share incentive scheme at Tesco
Tesco is promising to reward staff with a one-off 'turn-around' share bonus worth up to five percent of salary - provided they hit raised sales and profit targets this year. The potential payout in shares that staff would be able to cash in immediately is part of ceo **Dave Lewis**'s effort to get Britain's biggest retailer back on track after a slump in profits and sales and an accounting scandal, which led to a profits mis-

statement of more than £263m. Staff, from checkout operators to managers, were offered the turn-around bonus by Lewis as part of a new deal that included renegotiating pension arrangements to abolish its final salary scheme. The company released details of the new bonus scheme after negotiations with shopworkers' union **Usdaw**. The turn-around bonus will not replace the existing *Shares in Success* bonus scheme, which is a discretionary pay-out for all staff, agreed by the board of directors every year. This year, that scheme paid out one percent of salary up to a maximum of £1,000 though in previous years it has paid out three times that amount or more. Tesco said no decision had been made on the coming year's *Shares in Success* scheme but any changes would be made in consultation with the union.

Chairman urges Sports Direct to install a CSOP

Sports Direct, the booming high street retail chain controlled by Newcastle United owner, **Mike Ashley**, is to hand 2,000 managers and other permanent staff performance share bonuses worth collectively almost £155m, or £77,000 each on average, based on its recent share price. The managers will get £18,400 worth of shares in September and the rest in 2017. However, most of the group's 27,000 staff are agency workers and will be ineligible for the bonus. Of these, 15,000 are thought to be UK staff on zero-hours contracts, so Sports Direct can decide how much work to offer them and when. Many earn the minimum wage.

Centre chairman, **Malcolm Hurlston** who holds shares in the company and is a member of the **UK Shareholders Association**, has written to Keith Hellawell, chairman of Sports Direct, suggesting that a Company Share Option Plan (CSOP) should be installed for zero hours workers. *"At low cost our company can encourage employees, share the wages of capital and neutralise detractors,"* Mr Hurlston told him. Bonuses for the top 2,000 staff were generated by a performance scheme started by Sports Direct in 2011. Payout was triggered when the group beat targets for increasing its top-line operating profit every year for four years.

Ashley is now in a fresh controversy over a four-year bonus scheme set up last year, because he has said recently that he plans to lower its performance target for the current year. The scheme had required top-line operating profit to reach £480m for the current year, but Ashley wants this cut to £420m. Institutional shareholders object to directors tinkering with long-term performance criteria after they have been set but, as Ashley has a controlling interest in Sports Direct, any opposition at the group's agm in September is unlikely to stop him. Ashley, who founded Sports Direct in 1982 and who acts as executive deputy chairman, believes the lower bar is fair because the previous target assumed that the group would make acquisitions, including **House of Fraser,** which had not materialised. Mr Hellawell said: "Much of the comment regarding the group's use of zero hours contracts is unfounded and inaccurate. We comply fully with all legal requirements concerning casual workers, including sick & holiday pay, and freedom to gain other employment. Casual workers participate in general incentive schemes." Hellawell claimed the group's share bonus schemes were among the most generous in the UK and were 'key tools in motivation and retention'. Participating employees were eligible for awards on a pro-rata basis depending on their length of service with the group, he added. Ashley does not receive pay from the company and is not part of any bonus scheme. Sports Direct operates more than 660 stores, including 440 in the UK, with sales of £2.8bn.

*The Centre chairman wrote to **Work & Pensions Secretary of State Ian Duncan-Smith,** urging the government to boost the CSOP. Mr Hurlston told him: **"**You have called on companies to pay their full share of wages. There is a further and easier measure you can advocate. Much has been done, but statistics from HMRC soon to be released will show the need for the government to encourage companies to give stock options or shares to their employees to boost productivity and use the wages of capital to benefit employees. Both the Chancellor and the Business Secretary have praised its effect in **Royal Mail**. Employee share ownership can help tackle the UK productivity crisis and bring rank and file employees into share ownership where they can benefit from capital growth and dividends; boosting their income and contributing to life time provision.

"Just as most companies will not automatically raise wages as tax credits are cut they will not give their employees shares or share options without fiscal or moral incentives. There are two ways in which government can encourage them: First, by acting to raise the profile of employee share ownership and its effectiveness, as George Osborne and Business Secretary Sajid Javid have done in the case of Royal Mail; secondly, further incentives can be introduced through the tax system – both through tax advantages for all employee schemes and simplification of the tax, legal and regulatory environment.

"The tax advantages needed to encourage companies to introduce schemes for all employees are more affordable than tax credits owing to the boost to productivity employee shareholding brings. This effect is well established in the literature as well as in practice. The Centre's favoured approach is the all-employee CSOP – the *One Nation* share scheme par excellence. Through this the low paid and the part timers can become shareholders too. It is low cost to employers and nil cost to employees. The downside of the low cost is that there is no reward for intermediaries and hence no pull factor. CSOP is sorely in need of promotion: it would fit well with your new call for better rewards." The Department is passing the Centre's ideas to the Treasury, they have also been received by the policy team at the Centre for Social Justice; the think-tank founded by Iain Duncan-Smith.

Member news

*Channel Islands based Centre member **Appleby Group** has agreed to a private equity-backed management buy-out (MBO) of its fiduciary business, which includes the group's corporate administration, trust administration and fund services businesses. The fiduciary business will become an independent entity, owned and managed by its management team, which will be backed by a new shareholder, **Bridgepoint**, a leading pan-European private equity investor with a broad portfolio of successful companies across a range of industries, including business and finance. Both the management team and Bridgepoint are committed to ensuring the future success of the business, providing it with the resources and capital to extend the services Appleby offers its clients. **Farah Ballands**, head of Appleby's global practice group & fiduciary business said: "High levels of client service will remain at the heart of what we do and you will see no change in the service levels that we offer. Relationship teams will remain the same and will transfer to the new entity post completion and we are remaining at the same address in each of our locations. The fiduciary business will maintain a close and productive working relationship with the **Appleby** Law Firm, maintaining the benefits to our clients of the joined up approach enjoyed to date. So rest assured it is "business as usual. The deal will be subject to regulatory and legal approvals. Once these have been received, we will be launching a new brand name, reflecting our newly independent status."

***Accurate Equity**, the largest supplier of software and services for compensation plans in the Nordic region, has changed its company names following its acquisition by Zurich-based **Equatex.** The Accurate Equity business integration into Equatex, itself ex US, has been completed, the company announced from Norway. So **Stuart Bailey** and colleagues now fly under the Equatex flag. The successful integration of the financial reporting solution into the Equatex global administration platform considerably extends its capability to offer state-of-the-art technology within both plan administration and an extensive range of advanced accounting and disclosure reporting, it said. Finn Dahl, Head of Equatex Nordic commented: "We are happy about the exceptional progress we have made in a short time with the technical system integration. It is great to see how close the team already works together and how they partner cross-border. This creates a very good position for the further successful development of the Equatex business."

*Centre member **Cytec Solutions** announced that **Whitbread Group PLC** become the 25th client to sign up for *Insidertrack*, Cytec's flexible insider management software. Since its launch in May last year, Insidertrack has attracted much attention from both UK and International companies. Current Insidertrack clients include companies from the FTSE100, FTSE250, as well as smaller listed and overseas companies. For further info or to arrange a demo please contact Richard Nelson, email: richard.nelson@cytecsolutions.com or phone +44 (0) 7831 408698

*Canada based **Solium Capital**, a leading provider of software-as-a-service for global equity-based incentive plans administration, financial reporting and compliance, announced the establishment **of Solium Capital Trustee (Jersey) Ltd,** a managed trust company in Jersey. The manager of the trust will be **Appleby (Trust) Jersey**, which assisted in obtaining a trust licence from the **Jersey Financial Services Commission**. Under the terms of the agreement, Appleby will provide employee benefit trust (EBT) administration services to the MTC, which will enable Centre member Solium, to offer a seamless global service to UK plcs with the provision of an offshore trust capability. "We are very pleased to announce this partnership with Appleby. The EBT offering is a key component of our global trust and nominee services offerings, and the experience and reputation of Appleby will ensure we can deliver to the expectations of Solium's customers," said **Brian Craig**, executive director and head of Solium's UK and EMEA business**. Patrick Jones**, partner at Appleby, said: "We are delighted to be Solium's chosen partner. Our respective businesses complement each other well in that we have a common approach to service excellence and end delivery, and we believe that Solium Trustee (Jersey)'s offering will bring something new and exciting to the global share plan market."

*Centre member **YBS Share Plans** welcomed five new clients during the first half of the 2015 calendar year. YBS, the UK's second largest building society, is based in Bradford and employs 4,600 people. It opened 52,508 new employee shareholder accounts during the six months, servicing clients with employees based in the UK and globally. Almost three-quarters (74 percent) of its clients who were making Sharesave invitations offered the new £500 maximum savings limit, said national sales manager **Louise Drake.**

Eso stocks outrun the others

The Esop index (FTSE-calculated UK Employee Ownership Index) surged ahead of the FTSE All-Share in the half year ending June 30 2015. The UK Employee Ownership Index was up 34.3 percent while the FTSE All-Share was only up 3.0 percent on a total return basis, according to statistics revealed by the Esop Centre. An investment of £100 in the index on January 1 2003 would now be worth £1,007 - a compound annual return of 20.3 percent - compared to £285 if invested in the FTSE All-Share. Most of the gain was down to one company: AIM-listed broker Daniel Stewart Securities, whose share price rocketed 22–fold in 88 days following stake building and speculation of a takeover bid.

After stripping out the extreme effect of this one stock, the Esop Index still performed strongly: up 8.6 percent in the first half compared to 3.0 percent for the FTSE All-Share. The **Esop Centre** hosted the FTSE-calculated index's latest half year briefing, with the support of **Linklaters,** at an invitational seminar for

major companies, analysts, officials, academics, think-tanks and media. The index is based on the performance of UK quoted companies with more than three percent employee ownership (excluding main board directors). Both indices are calculated by FTSE International, a subsidiary of **London Stock Exchange**; the Esop index was developed and is maintained by **Capital Strategies**.

Esop Centre chairman Malcolm Hurlston said: "The Chancellor and the Business Secretary have commended the impact of employee share ownership in Royal Mail, an Esop index constituent. They have rewarded its employees with a promise of a further £50m worth of stock. Esop investment may not quite be the one-way bet this half-year implies but the substantial outperformance compared with the All-Share is pikestaff plain." Nigel Mason of Capital Strategies said: "These strong results are mirrored in our private portfolio, which is well ahead of the FTSE in its first eleven months. Thanks to our pioneer investors, we are building a solid investment track record which we hope provides the conclusive evidence that employee share ownership can deliver strong returns." The Centre is the leading advocate of share ownership for **all** employees.

Budget

Predictably, there was little meat for employee share ownership in the Chancellor George Osborne's summer Budget – the first exclusively Tory budget in 18 years – given the well rehearsed need to reduce the nation's deficit. However, leading share plans director **Mike Landon,** of remuneration consultants **MM & K,** quickly spotted potential tax implications for those employee shareholders who take dividend shares out of a tax advantaged Share Incentive Plan (SIP) in 'bad leaver' circumstances. Mike told *newspad* : "Employee shareholders are generally subject to income tax on cash dividends in the same way as other taxpayers. However, if dividends received on shares held in a SIP are reinvested to acquire dividend shares, there is no income tax charge on those dividends at that time. When SIP participants end their employment, they are required to remove their shares from the SIP. If the reason for ceasing employment is a 'bad leaver' reason - for example voluntary resignation or dismissal - any dividend shares acquired in the previous three years will potentially become taxable. The taxable amount is equivalent to the dividend which was originally reinvested to acquire the shares. There is no tax charge for basic rate taxpayers, but higher and additional rate taxpayers pay tax at the effective rate of 25 percent or 30.56 percent."

Mr Landon explained: "Under the new proposals, dividend tax credits will be abolished from April 6 2016. There will be a new dividend tax allowance of £5,000 a year. The new rates of income tax on dividend income above this allowance will be 7.5 percent (basic rate taxpayers), 32.5 percent (higher rate) or 38.1 percent (additional rate). These new rates are all higher than the current effective rates. This will mean that some higher and additional rate taxpayers, whose dividend income is no more than £5,000, will no longer have to pay income tax on their dividends. On the other hand, some basic rate taxpayers may have to start paying income tax on their dividends, when the tax was previous covered by the tax credit. This could mean that some individuals who do not currently have to complete self assessment tax returns will have to start doing so, to declare their taxable dividends.

"In a similar way, some higher and additional rate taxpayers who currently have to pay income tax on their dividend shares when they cease employment in bad leaver circumstances will no longer have a tax liability for these shares. On the other hand, some basic rate taxpayers will have income tax to pay on their dividend shares. There are already quite a lot of SIPs where some employees receive dividend shares each year in excess of the previous £1,500 limit (abolished from April 6 2013). There are therefore likely to be some SIP participants who have acquired more than £5,000 worth of dividend shares in the previous three years. The £5,000 figure will, of course, include any other dividends which the employees receive during the relevant tax year outside the SIP (except on shares held in a tax exempt ISA or pension plan). We recommend that companies should start considering appropriate changes to their employee booklets and communication materials for SIPs and other employee share schemes," said Centre member MM & K.

SME practitioners will be interested in the Budget **Venture Capital Schemes** rules changes**:** Following consultation, a number of changes to the EIS, SEIS and VCT rules were announced in the Budget, said Centre member **Deloitte**:

*The money must be used for the growth and development of the company;

*Investors must be independent from the company at the time of their first EIS issue for relief to be available; therefore where an individual already holds shares in the company (other than founder shares) relief will only be available if the existing shares are a 'risk finance investment' (an investment under EIS, SEIS or Social Investment Tax Relief);

*EIS and VCT funds cannot be used to acquire existing businesses. In addition, the rule prohibiting the use of money for the acquisition of shares will be extended to all acquisitions made by VCTs;

*Companies must raise their first EIS, VCT or other risk finance investment within seven years of their first commercial sale or ten years if the company is a knowledge intensive company. This will not however apply where the amount of the investment is more than 50 percent of the company's average annual turnover from the five preceding years:

*The employee limit for knowledge intensive companies will be increased to 500

*A new cap will be introduced on the total amount of investments a company may raise under EIS or VCT. The cap will be £12m or £20m for knowledge intensive companies

*The requirement for 70 percent of SEIS money to be spent prior to the issue of EIS shares is removed
*EIS will no longer be reduced where SEIS shares are redeemed, provided SEIS relief is repaid.

Golden goodbye, bonuses and employee ownership

*Sacked **Barclays** ceo Antony Jenkins will walk away with about £28m in cash and shares despite failing to turn around the troubled bank. Mr Jenkins was fired by chairman John McFarlane after losing the confidence of the bank's board. The ousted boss' payout includes a £2.4m *'golden goodbye'*, £15m in shares and nearly £11m in bonuses, it was reported. The £2.4m cash sum includes his £1.1m annual salary, £950,000 allowance and £363,000 pension contribution, the *Sunday Times* reported. His total pay -off could increase by another £10.8m depending on the bank's performance in the short and long-term. Mr Jenkins is said to have been fired because he failed to make enough headway cutting down the forest of bureaucracy engulfing Barclays. He failed to cut costs quickly enough and has struggled to improve the performance at the investment bank, it was claimed.

*More than 32 percent of **Icap** shareholders voted against the remuneration policy which set out the plans to increase boss **Michael Spencer**'s salary from £360,000 to £750,000 but reduce the size of bonuses – which could be many times the size of his base salary. Despite the revolt over the change at the company's agm, investors backed the remuneration report – which sets out how Spencer and other staff were paid in the most recent financial year. Spencer, who owns 16 percent of the business, received £3.3m compared with £2m a year earlier. Robert Standing, chair of Icap's remuneration committee, had attempted to explain the new pay policy in the annual report issued before the meeting. "We recognise that the new salary for Michael Spencer is, in both absolute and percentage terms, very much higher than before. This is balanced, however, by a modest pension provision, significant decreases in maximum opportunity and maximum cash, and a material increase in longer-term, at-risk, share awards," Standing said. Icap was disappointed by the result because it said that shareholders had been consulted about the changes, which were backed by major investors and shareholder advisory bodies.

***Network Rail** bosses were stripped of their bonuses as Patrick McLoughlin, Transport Secretary, announced a major shake-up over "absolutely unacceptable" problems in train services during the past year. No executive director is to receive a bonus after thousands of passengers were left stranded at King's Cross and London Bridge stations in the last Boxing Day travel chaos, he said. Mr McLoughlin criticised the state-owned company over delays and spiralling costs of the electrification of train lines and said its performance had "not been good enough". Yet the number of Network Rail executives earning more than the Prime Minister has risen by more than half over the past four years despite a catalogue of failings over rail upgrades. More than 50 staff at the organisation now earn more than £142,000, up from 32 when the Coalition came into power in 2010. Ceo Mark Carne earned £771,000 last year while the five most senior executives at the organisation took home £2.4m between them. Yet commuters will face a decade of delays after the government was forced to shelve vital upgrades to major railway lines between the North and the South. Richard Parry-Jones, Network Rail chairman, is stepping down, to be replaced by **Sir Peter Hendy**, London's Transport Commissioner who oversaw travel during the 2012 Olympics and who first came to prominence leading a management /employee buyout at Centre West buses in Paddington, supported by the Centre. Network Rail's £38bn investment plan was thrown into disarray as Mr McLoughlin said the programme would be reset after "costing more and taking longer" than hoped. Rail customer watchdog Transport Focus published a survey showing that train passenger satisfaction levels were dipping.

***Harriet Green,** former boss of **Thomas Cook**, will give a third of her £5.7m share bonus, £1.9m, to a charity chosen by the parents of two children who died while on holiday. The travel company was criticised for its treatment of the family of Christi and Bobby Shepherd, who died from carbon monoxide poisoning in Corfu in 2006. An inquest ruled the pair were unlawfully killed. The family, from Wakefield, were on holiday when they were poisoned by a faulty gas boiler at the Louis Corcyra Beach Hotel. Ms Green was awarded 4.1m shares in Thomas Cook, the bottom end of the range to which she was entitled, for meeting financial targets during her 2.5 years as the group's ceo. She said: "This award... is in recognition of the work we did together as a team to save the company and put it on a firm foundation for the future, saving the jobs of over 25,000 people, adding £2bn of shareholder value to the business and raising standards for customers. I am particularly pleased to be able to honour my commitment to give a third of my bonus to charitable causes and am grateful for the support of the parents of Christi and Bobby Shepherd in agreeing these causes." *Thomas Cook's board had no power to reduce Green's award itself to reflect damage to the company's reputation.* The 4.1m shares flow from the application of financial measures – the share price, cash generation and earnings. Though there was no scope to act outside that remit, new contracts will include 'malus' provisions.

***Panmure Gordon & Co** No. 2 Employee Benefit Trust on July 6 purchased 20,000 ords at £1.525 each. These shares are to be held in the EBT and are intended to be used to satisfy share awards made under the company's performance share plan or other future plans. Praxis-FM Trustees Ltd, as Trustees of the EBT, already held 1,297,972 ords in the company, 288,984 of which are the subject of share options granted to employees under the 2005 Employee Share Option Plan. The EBT's total holding is 1,317,972 ords, representing 8.5 percent of Panmure Gordon's issued share capital.

***Price Bailey** became one of the few in the professional services arena to offer its 300 employees a stake in the firm. Each employee with more than one

year's service, irrespective of their grade, receives 2,500 shares worth £250 in the accountancy firm. It predicts that the shares will increase in value by about ten percent per annum and it is likely that an annual dividend will be paid. Price Bailey md, Martin Clapson, believes the share scheme will help to further promote an environment where people feel valued and appropriately rewarded and can help drive the business forward through a higher sense of inclusion, involvement and reward. He said: "I wanted to formally recognise our employees' valuable contribution by giving them a share in the firm, to ensure that we harness the best ideas and retain our people, whether they are in support functions, management or a fee-earning role." Price Bailey currently offers a wide range of benefits, including a confidential employee helpline and salary sacrifice. Clapson added: "This represents a real milestone in our history and I'm proud to refer to all Price Bailey employees as shareholders."

***Axillium**, a Northampton based engineering business, became employee-owned when it completed the sale of its shares into a newly formed EBT. The company's founder and md, Will Searle, said the move was a key enabler of the company's growth plan, helping to develop on-going company loyalty and reinforce a supportive, highly motivated environment and culture. *Shakespeare Martineau* said: "*The thought of empowering the workforce to take commercially sensitive decisions about pricing and shift patterns can strike fear into management — particularly if they have been used to taking decisions in a more autocratic way. Business leaders must ensure that management team buy-in is secured from the start.* The key thing is that employee-owned businesses will still need a strong and effective management team to guide decision-making. Concern about what would happen to shares if an employee leaves the business can be avoided by opting for indirect share ownership, which is what is in place at **John Lewis,** where the shares are held in trust, which removes the need to buy back shares when employees leave. Making the transition to employee ownership can be done in stages, or by way of deferred payments, to alleviate any pressure on cash flow or bank finance available. A proportion of the shares might be purchased initially and placed in an Employee Ownership Trust (EOT). The remaining shares could then be purchased later on. Many businesses are drawn to the employee ownership model for the first time when planning for succession. The fact that there is a CGT exemption for the disposal of shares that result in a controlling interest in a company being transferred into an EOT provides a valuable, added incentive. In addition, the income tax breaks on future profit related payments to the staff which can be achieved with this model add to the tax incentives available,"

*Worcester based software company **Postcode Anywhere** launched an employee ownership trust. It is now 100 percent owned by its employees after its two founders, Jamie Turner and Guy Mucklow implemented an Enterprise Management Incentive (EMI) to give all Postcode Anywhere employees the opportunity to own a share of up to ten percent of the business. They decided to become employee owned in order to recognise the significant contribution made by their colleagues to the value of the business and to create a culture where everyone can benefit from its future success.

***Tibbalds Planning and Urban Design** increased employee ownership to 60 percent. The independent planning, design and architecture consultancy introduced majority employee ownership when its EOT bought shares from the organisation's four founders. The move was part of the company's long-term business plan to harness and strengthen its ethos and culture, look ahead to succession, and retain its independence as a business that can be passed onto future generations of employees. Employees in an employee-ownership trust organisation can receive income tax free bonuses of up to £3,600 per tax year. A team from Centre member law firm **Fieldfisher**, led by partner **Graeme Nuttall OBE**, advised Tibbalds on the introduction of majority employee ownership.

On the move

*__Charity bikers__: **Peter Mossop,** director of executive incentives at Centre member **Sanne Group**, writes: "Last year I took part in the 100 mile **Prudential Ride London** event with colleagues, Tom Hicks and Paul Rowe to raise money for **Children in Crisis**. The event was blighted by freakish weather resulting in driving rain and flooding in Surrey, so the course was shortened to 86 miles to take out the treacherous descents from Box Hill and Leith Hill. Feeling cheated and having still not completed 100 miles on the bike, on **August 2** I am taking part again with (some fresh victims) Ross Crick and Matt Morel from Sanne and my (very trusting) wife, Jo. 25,000 riders will set off in batches from London's Olympic Park at 6am and will follow a 100 mile route on closed roads through London and into Surrey. The event finishes on The Mall in central London. Our target time is seven hours, which is a long way short of the time set by the Olympic cyclists but it will be a testing challenge for we 'enthusiastic amateurs.' In addition to the personal challenge, we have set ourselves a fundraising target of £5,000 for our chosen charity which is **Children in Crisis** www.childrenincrisis.org . We have made a great start and we hope to burst through it convincingly. 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 page at: http://tinyurl.com/q4omdjl *Children in Crisis* is a really special, small charity, dedicated to improving the lives of children in post conflict and disaster zones long after the foreign forces, relief and media teams have gone. It is one of the charities supported for some years by the Sanne Charitable

Trust and we have already run a number of initiatives to raise money for them and have supported them with a dedicated project to provide clean water and basic sanitation facilities for remote schools in a Liberia devastated by the recent Ebola outbreak in West Africa, amongst other things. We are delighted to be able to ride for them again this year. Thank you so much to everyone who has already supported us. In addition, two weeks after the Ride London event, on **August 14**, the ceo of **ShareGift**, **Julian Roberts** and I will ride from **Buckingham Palace** to the **Eifel Tower** in under 24 hours, nonstop. The aim is to have lunch in London followed by a well earned lunch in Paris. The organised charity events take three days to cover the same distance. The route we have chosen covers a distance of 250 miles door to door (*admittedly some is on the ferry between Newhaven and Dieppe but 200 miles is in the saddle*). This is not an organised event although I will be wearing my Children in Crisis cycling top in support."

*The chairman writes: "Long-standing Centre member **Judith Greaves** of **Pinsent Mason** received a sunny send off in Leeds' Little Venice. Guests, including Centre members **YBS,** and colleagues, including **Matthew Findley**, enjoyed the Leeds and Liverpool canalscape outside the Hilton before trooping inside to hear head of office **Chris Booth** praise Judith for her 27 year career and contribution to firm and clients. She received a picture of nearby Bingley. Chris made special mention of her ability to work lying on the floor but, despite the flow of Pimms, food and banter, everybody was still standing by the time your correspondent left. Perhaps someone can explain the allusion. Judith received honorary and individual membership of the Centre."

***Sally Robinson** has left Centre member **Clifford Chance**. Contact her at sallyr08@hotmail.co.uk for the time being.

CONFERENCES

Centre - IoD September 3

The Centre's next joint share schemes conference with the **Institute of Directors** takes place on **Thursday September 3** at the Pall Mall HQ of the IoD. This all-day event is co-promoted by Bird & Bird, David Craddock Consultancy Services, Fieldfisher, Haines Watts, MM&K, Nabarro, Pett Franklin & Co, Primondell and the RM2 Partnership. For further details please see event flyer at the end of this edition of *newspad* or visit the event page at: http://tinyurl.com/nfc2zha

For all enquiries, contact Jacob Boult, email: jboult@esopcentre.com or phone him on +44 (0) 20 7239 4971.

Centre - STEP Guernsey October 9

The Centre's annual Guernsey share schemes seminar, held in partnership with the Society of Trust & Estate Practitioners (STEP), Guernsey branch, will take place on **Friday** morning **October 9 2015** at the St. Pierre Park Hotel, St. Peter Port. The event will review employee share schemes from a trustee perspective, providing an update for trustee delegates. Law Society accredited, this half day seminar will run from 9am till 1.15pm, prefaced by refreshments and followed by lunch.

Gavin St Pier, States of Guernsey minister for treasury & resources is guest of honour, speaking on the issues of the moment. Gavin is a former member of the Centre's steering committee. The following expert speakers will be presenting: **Stephen Woodhouse,** Pett Franklin & Co**.; Alison MacKrill,** Carey Olsen and **Jeremy Mindell,** Primondell; **Mahesh Varia**, Travers Smith; **David Craddock**, David Craddock Consultancy Services. For further details, including a breakdown of the presentations please visit the event page: http://tinyurl.com/nvmpbwh Delegate prices: **Early bird offer until July 31**: buy three tickets and get the cheapest free ESOP Centre/STEP members: £325 Non-Members: £450. To register to attend as a delegate please contact the Centre at esop@esopcentre.com or call +44 (0)207 239 4971.

Centre Awards Dinner & Reception October 28

The Centre's 14th annual employee share ownership awards dinner will be held in the grand Italianate surroundings of the **Reform Club**, Pall Mall, on **Wednesday, October 28**. The awards dinner brings together 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 evening will begin with a champagne reception, followed by dinner. 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. Places are limited so early applications really are recommended. *Ticket prices*: Members £185, table of ten £1700, Non members £260 plus VAT. To reserve your place please contact the Centre providing the details below by emailing esop@esopcentre.com or calling +44 (0)207 239 4971.

Accepted nominations for the Centre Awards 2015:

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

Amadeus IT Holding S.A., self-nominated
Royal Dutch Shell, nominated by Computershare

Best all-employee share plan in a company with fewer than 1,500 employees

Abzena, nominated by MM&K
Crest Nicholson, nominated by Equiniti
Henderson Global Investors, self-nominated

Best all-employee share plan communications

Abzena, nominated by MM&K
Kingfisher, nominated by Capita
Royal Dutch Shell, nominated by Computershare
Amadeus IT Holding S.A., self-nominated

Close Brothers, nominated by Equiniti
Henderson Global Investors, self-nominated

Best in financial education of employees
Auto Trader, nominated by Capita
Henderson Global Investors, self-nominated

Best integration of an all-employee share plan into a wider programme of employee engagement
Talk Talk, nominated by Equiniti

Please note: further nominations for this category are being accepted through the Involvement and Participation Association (IPA), and will be announced following its call to members for submissions.

Best use of video in share plan communications
Home Retail Group, self-nominated
Amadeus IT Holding S.A., self-nominated
Telefonica, self-nominated

The best employee equity intervention by a major company chairman or ceo
Sacha Romanovitch, Grant Thornton ceo
Cesar Alierta, Telefonica chairman

VIENNA to host Centre annual conference June 2 & 3 2016

The elegant five star **Steigenberger Herrenhof Hotel,** in central **Vienna,** will host the Centre's 28th annual international share schemes conference on **Thursday/Friday June 2 & 3** next year. The 100 year old Herrenhof Hotel is situated in **Herrengasse,** near the Kohlmarkt and Golden Quarter in the old city centre, is classified by the UNESCO as a World Cultural Heritage site and is a few minutes' walk away from major historic landmarks, such as the Hofburg Palace, Café Central, the Spanish Riding School, Sisi Museum, the state opera house, Burgtheater (the Imperial Court Theatre) and gothic St. Stephen's Cathedral.
The Centre wishes to thank all those members who voted to help decide the location of our next annual conference. Four cities were in the frame – **Rome, Vienna, Berlin, Reykjavik**. However, Berlin and Reykjavik attracted few Centre conference-goers' first or second preference votes. Rome and Vienna were tied, well out in front of the others, but we were swayed by a number of regular speakers who told us that it was time for the Centre to pitch its tent in another major European city, despite the many joys of Rome. If you plan to either speak, or attend as a delegate, at this event on **Thursday/Friday June 2 & 3 2016,** please send an e-mail asap to: fhackworth@esopcentre.com as getting more rooms will be difficult, once our pre-booked allocation is taken up.

French share plan participation rivals UK

The take-up of employee share ownership in France may have ended the UK's supremacy hitherto in the level of employee Eso participation. More than 3.7m French employees were shareholders in their companies at the end of last year, according to *Croissanceplus.* On average French employee shareholders hold collectively almost four percent of the total equity in their companies, well ahead of the EU average of 1.6 percent.
Recent statistics for the level of UK Eso participation in the fiscal year 2013-4 will not be available until September this year, admitted the **Office of National Statistics**, which sends its annual number-crunching results to **HMRC** for publication. However, around 4.4m UK employees were awarded shares or share options in one Eso scheme or another in 2012-13, though the likelihood of double-counting **(employees participating in several schemes simultaneously or buying more SIP shares monthly, instead of annually)** means that the actual *number* of UK Eso participants was significantly below this level.
As in the UK, almost all large French companies have installed employee share plans, but only 16 percent of French SMEs to date use Eso, according to a survey by *OpinionWay*.
More than 1.4 million UK employees were saving an average of £122.94 a month by investing in the organisation they work for through Sharesave and SIP approved share schemes in 2014, according to a study from *IFS Proshare*. These numbers were up from 1.25 million employees saving £107.76 a month in 2013. Its research showed that UK employees saved an additional £40m through share schemes in 2014 compared to 2013. Following the government's decision to raise monthly saving allowances, more than a fifth of participating employees increased their contributions to Sharesave schemes or Share Incentive Plans (SIPs).The number of employees joining a Sharesave scheme in 2014 rose to 576,538 from 378,420 in 2013.

Ten year bonus wait for senior bankers

Senior bankers may have to wait for up to ten years to receive their full bonuses under new rules announced by the UK's financial regulators. The **Prudential Regulation Authority** and the **Financial Conduct Authority (FCA)** said that they were planning to introduce a seven-year claw-back period for a wider array of bankers but may introduce an additional three-year delay for the most senior members of bank management teams. The watchdogs hope lengthy claw-back periods will incentivise bank executives to work for the long-term good of the business, rather than to hit short-term targets. Departing FCA ceo Martin Wheatley said: "These rules are part of a wider package to embed an accountable culture in the City. Our rules will now mean that senior managers face claw-back of bonuses for up to ten years, if misconduct comes to light. This is a crucial step to rebuild public trust in financial services, and allows firms and regulators to build long -term decision making and effective risk management

into people's pay packets." Both regulators announced that they will consider the position of buy-outs further, with a view to making sure that they are properly subject to adjustment prior to payment and claw-back after payment, said Nicholas Stretch of *CMS Cameron McKenna.*
*Both the PRA and FCA rules will require longer deferral of variable remuneration. Although the percentages of variable remuneration which must be deferred will not change, what is deferred must be deferred for longer. Deferral will be for up to seven years in the case of those who are senior managers within the framework of the new senior manager regime (with no vesting beginning before the third anniversary of the award). Deferral will be up to five years for material risk takers (or Code Staff as they are commonly known) who are 'risk managers' (which will only be relevant for PRA regulated firms), and three years for other material risk takers. In the original proposal, all material risk takers were to have a five year deferral period and so this is a concession.
*The FCA is introducing the same claw-back rules as the existing PRA rules so that there will be a seven year look back provision, but both the PRA and FCA will extend that look-back period to ten years where there are ongoing regulatory proceedings.
These changes take effect for pay for performance years starting January 1 2016. From this month on, non -executive directors cannot receive variable remuneration, making sure that no discretionary payments can be made to 'the management body' of firms in receipt of new taxpayer support and strengthening the PRA requirements for dual-regulated firms to apply more effective risk management to variable remuneration. Other changes will be made on how risk-based pools can be calculated and to stress that narrow revenue-focused metrics are insufficient.
The PRA consulted on whether and if so how buy-outs could support its regulatory principles on pay. It has concluded that they can, but they need proper linkage to the performance of the previous employer and relevant malus/clawback terms. They will consider whether any further rules are needed on this (though no timeframe is given).
Both the PRA and FCA warn, however, that this may not be the end of what seems a never-ending series of consultations and changes on banking remuneration. Their rules may need to change further, depending on final **European Banking Authority (EBA)** updated remuneration guidelines when they are published later this year and the PRA/FCA response to them. The EBA proposals include controversial changes in the UK such as requiring all firms affected by CRD4 to impose pay deferral etc. without any proportionality concessions and requiring all companies within a banking group - not just banking companies - to comply with relevant rules. There has been wide UK opposition to these proposals.
Shareholders, politicians and customers have been angered by the failure to punish those executives thought to have landed their firms in trouble during the credit crunch or subsequent scandals like Payment Protection Insurance (PPI) mis-selling. The latest move is part of a series of rule changes designed to increase accountability. Other examples include the threat of jail for traders who manipulate market benchmarks such as Libor. Under the new rules, most senior bankers will face a deferral period of seven years on their bonuses. Their bonuses will be held by the bank for the first three years and then paid out in chunks of up to 25 percent a year over the following four years.
If the banker misbehaves during that period - even in an area unrelated to that for which the bonus was awarded - the bonus can be reduced or scrapped altogether. The regulators can extend the claw-back period for another three years if an investigation into potential material failures at the bank has been launched. More junior bankers will face shorter deferral periods - five years for managers with supervisory or managerial roles and three years for so-called 'material risk-takers'.
However, some warned that the tougher rules may handicap the UK financial industry. "As promised by the Government, the UK now has the toughest bank pay rules in the world," said PwC's Jon Terry. "However, the implications for UK banks' competitiveness can't be ignored. Although the PRA says they don't want this to happen, it is likely that British banks will need to pay a premium to attract senior executives outside the UK, and more in fixed pay then their foreign competitors."
*New EU remuneration rules loom as The EBA consultation closed on June 4 and the Authority was considering all the responses received: new remuneration guidelines will be published in the coming months and it is anticipated that EU regulators will implement the guidelines by the end of 2015 so that EU-regulated banks and investment firms will then apply the new remuneration rules to the 2016 performance year and thereafter, said lawyers *Katten Muchin Rosenman LLP* Any EU regulator that elects not to apply the guidelines from the EBA must formally explain to the EBA and other EU authorities why they are not applying the guidelines in their jurisdiction. In the event that the EBA does decide to remove the proportionality requirement and the guidelines ultimately recommend that all firms should comply with the pay-out process rules, it is likely that the Financial Conduct Authority (FCA) will elect not to apply the guidelines in the UK since, to date, the FCA has taken great care to ensure that CRD IV remuneration rules are proportionate to the scale, nature and complexity of investment firms' UK business.
The British Bankers' Association (BBA) published its response to a consultation on remuneration guidelines previously published by the EBA. The draft guidelines published by the EBA complement its opinion and report on the application of the

Capital Requirements Directive IV (CRD IV) remuneration principles for EU banks and investment firms (i.e. most EU-regulated financial institutions). The draft guidelines provide additional detail in support of a cap on the payment of bonuses by such firms. One potentially significant aspect of the draft guidelines relates to the "*proportionality principle*," which allows EU regulators to follow a purposive interpretation of CRD IV rules and allows smaller firms not to have to comply with bonus deferral requirements and rules relating to the payment of bonuses in securities (pay-out process rules). While the draft guidelines consider implementing specific exemptions for staff that receive only a low amount of variable remuneration (i.e., bonuses), there is a proposal that the proportionality principle could effectively be removed so as to apply the remuneration rules equally to all EU-regulated banks and investment firms, regardless of their size. The BBA's response was generally supportive of the EBA's revisions to the guidelines, as this would help to ensure a consistent approach to the implementation of the CRD IV requirements across the European Union. However, the BBA response emphasised significant concerns over the proposal to remove the proportionality principle - since this would have a significant and disproportionate impact on smaller firms.

*The US **Securities & Exchange Commission** proposed rules extending incentive-pay claw-backs and disclosures to a wider group of corporate executives. The 3-2 vote represents the SEC's most recent attempt to curb excessive compensation and discourage risk-taking that contributed to the financial crisis. Equilar, a US executive compensation analyst, found that in 2014, ceo pay not only was increasing but that the *median* ceo compensation was $13.9m. If it becomes law, all exchange-listed companies will be required to include specific recovery or claw-back provisions in their executive employment contracts for incentive-based compensation improperly awarded. While well-intentioned, its effectiveness has been questioned. The proposed regulations fall under the executive compensation provisions of the Dodd-Frank law of 2010. Under the proposed rule, companies would have to recover, or claw-back, bonuses paid to executives that were based on erroneous financial information. Under the proposal, claw-backs are limited to incentive payments and not to other forms of pay or stock options. The SEC defines incentive-based compensation as payments tied to certain financial reporting measures calculated in the company's financial projections. Typically, such incentive payments might be dependent on increased sales, margins or earnings per share.

Existing rules allow corporations to claw back the pay of the ceo or cfo, but the new regulation will apply to a much broader group that includes not only other senior officers but also "any other person who performs policy-making functions for the company," according to the SEC The proposed rule allows for claw-backs even if the financial restatement was not the result of misconduct, something that is required under the existing provisions. And the new rule applies to pay earned over three years, compared to a year under the current regulation.

A financial restatement may affect the basis for incentive compensation. If so and the prior incentive payouts are deemed excessive, they are subject to corporate recovery.

There is no requirement to prove individual culpability for flawed projections. But in the event of a material accounting restatement, companies under the proposed rules must show specifics of all recoveries and detail why claw-backs were not pursued. Listed companies will be required to file incentive pay recovery policies as exhibits to their annual reports required by the Securities Exchange Act. The proposals have received criticism for having been badly drafted, allowing loopholes for executives to retain excess compensation. Replacing incentive-linked pay with higher base salaries could diminish motivation for executives to work harder. The concern is that if executives are paid like bureaucrats, they will perform like bureaucrats rather than risk-taking, job-adding entrepreneurs. If a company concludes recovery yields no cost benefit or that it contravenes a foreign law, the rules permit claw-back avoidance.

SMEs next in line for auto pension enrolment

In October 2012 pension changes were introduced in the UK requiring all employers to automatically enrol their employees in a pension scheme. The changes are being phased in and until now have only affected large employers. However, with most large employers now signed up, auto enrolment is starting to hit small and medium-sized (SME) employers, said Centre member **Abbiss Cadres.**

Auto-enrolment is compulsory for all UK employers – even if firms employ just one person. These are the key points:

You will be given a 'staging date' by which you must enrol all your relevant employees into an approved pension plan.

Relevant employees are those who: are aged between 22 and State Pension age, earn more than £10,000 a year and work in the UK.

There is a minimum contribution rate of one percent for employers, which will increase to *three percent* by 2018

Employees will be given the option to 'opt out' of the pension plan – but only after they have been automatically enrolled. As there are fines of up to £10,000 a day for non-compliance, it is essential that firms are prepared for auto-enrolment.

Lloyds: Will Eso get a look-in?

The government's stake in **Lloyds Banking Group** fell below 15 percent as **UK Financial Investments (UKFI)**, the body responsible for handling the government's stakes in the once ailing banking sector, again sold more shares to investors in the open market. Lloyds group received £22.5bn from taxpayers to prevent it going bankrupt during the financial crisis. The Eso industry is still waiting to see whether Lloyds Bank employees will be offered priority access to at least one of the next share sales, some of which may be offered to the public. The government originally owned a 41 percent stake in the bank, but started selling Lloyds shares in 2013. This latest sale, handled by investment bank **Morgan Stanley**, means that more than £13bn has been returned to the taxpayer so far. A final Lloyds shares retail offer, along the lines of the 'Tell Sid' campaign, was expected within the next nine months, to dispose of the remaining shares still in state hands. To encourage public interest, a discount of up to five percent of market value was planned, but direct sales via the City are whittling away the taxpayers' stake in Lloyds almost by the week.

Lloyds received a further boost when Spanish bank **Sabadell** was granted permission from regulators to take over TSB, the high street challenger bank spun off by Lloyds. This will mean a major windfall for TSB employee shareholders. TSB floated on the stock market a year ago, but Lloyds still owned a 40 percent stake. The £1.7bn acquisition represented a 30 percent premium to the share price before Sabadell's interest was announced, giving Lloyds a higher price than it had expected for the lender. More than £2m in bonuses were given to top Lloyds executives just weeks after the bank was hit with a £117m fine for mishandling payment protection insurance compensation claims. The bank withheld £2.6m of bonuses following the fine from the Financial Conduct Authority, which covered the period 2012 and 2013. However, Lloyds released shares from bonuses deferred from those two years which had not been withheld. Members of the executive committee had on average about 25 percent of their bonus withheld, while the the ceo, António Horta-Osório, had £350,000 docked. He was not included in the announcement. The bank revealed it handed out just over £1.1m of shares as a quarterly instalment of a so-called fixed share award, put in place to sidestep the EU's cap on bonuses. The cap limits bonuses to one times salary – or twice if shareholders approve – so many banks have been handing out fixed amounts of shares alongside salaries to prevent overall pay levels falling. Horta-Osório was awarded 136,880 shares, after tax and national insurance payments, worth around £120,000. Taxpayers' 80 percent stake in **Royal Bank of Scotland (RBS)** may be sold at what analysts predict could be £7bn loss, as the government prepared to start selling the shares.

Relaxation for reporting share schemes

Offshore employers who cannot be required to and who do not operate a PAYE scheme are currently not able to file share scheme reports electronically, as this requires a PAYE scheme number, said Centre member **Deloitte.** Even where the employer has an obligation to make a return of reportable events, HMRC's systems will not allow it. HMRC have recognised this and announced that in such circumstances no return will be required for 2014-15. The employer must not be member of a group that has a PAYE presence and the relaxation does **not** apply to tax-advantaged schemes (that is, not to SIP, SAYE, CSOP or EMI schemes). It is currently unclear whether HMRC will enable employers to file without a PAYE reference in future years.

Occupational benefits crisis grows

The total deficit of the defined benefit schemes of the top 250 FTSE companies has grown by £5bn in a year, reported **Labour Research Department**. The total deficit in these Defined Benefit (DB) *most commonly final salary* pension schemes at December 31 2014 was estimated to be £12bn, a deterioration of £5bn from the figure 12 months earlier, according to **JLT Employee Benefits.** Just eleven FTSE 250 companies still provide DB pensions to a significant number of employees. This is part of a broader trend of significant decline in ongoing DB pensions as employers seek to contain their soaring cost. In April, supermarket group **Tesco** took steps towards ending its DB scheme to future accrual. Tesco rival, **Morrisons,** has consulted on the closure of its DB pension scheme. Last year saw total deficit funding of £1.3bn, up from £1.2bn the previous year. Insurance service group **Phoenix Group** led the way with a deficit contribution of £100m and 37 other FTSE 250 companies reported significant deficit funding contributions in their most recent annual report. Sixteen FTSE 250 companies have total disclosed pension liabilities greater than their equity market value. Rail and bus company **FirstGroup** has total disclosed pension liabilities of almost four times its equity market value. However, a spokesperson at FirstGroup said: "The research doesn't tell the full story of our pension arrangements, because it excludes the assets in our pension schemes. Our net pension deficit in the 2014-15 fiscal year was £239.4m. Furthermore, it is important to note that our rail companies pay into the Railways Pension Scheme and FirstGroup has no terminal liability connected to that scheme." In the last 12 months, the total disclosed pension liabilities of the FTSE 250 companies have remained at **£71bn.** Twenty companies have disclosed pension liabilities of more than £1bn, the largest of which is FirstGroup with disclosed pension liabilities of £4.6bn. By contrast, 158 companies have disclosed pension liabilities of less than £100m, of which 109 have no defined benefit pension liabilities.

Regulation surfeit

"In your report '*Shell warns of trade threat posed by tax uncertainty'* is a clear reflection of the significant impact that the profound and unceasing changes to the international tax system are having on multinationals," wrote **Tim Wach,** global md, *Taxand***,** in a letter published by the *Financial Times*: **"**Simon Henry, Royal Dutch Shell's cfo, rightly points to the uncertainty that this constantly evolving environment is causing, not just for finance teams but for the overall strategy of multinational businesses and their ability to carry out investment and trade. The rationale behind the OECD's base erosion and profit shifting (BEPS) initiative is sound — providing clearer guidance on what is acceptable tax planning, at least from the perspective of governments, and levelling the playing field for all taxpayers is indeed desirable. If successful, these rules will undoubtedly make the life of the finance director a bit easier, but there is a real concern that the bar has been set too high and that reaching a consensus on international implementation is near impossible. In addition, it is not just BEPS that multinationals are having to deal with. Tax authorities globally are becoming more aggressive, seemingly emboldened by developments such as BEPS, and tax disputes are growing in number and size and taking longer to resolve. As well, in the last few months across Europe we are hearing noises around the revival of both the **Common Consolidated Corporate Tax Base (CCCTB)** and the **Financial Transaction Tax**. The growing complexity and risk arising from this wave of new rules, and the uncertainty of their precise nature and timing, has a genuine risk of stalling global economic growth at a time when such growth is vitally important." Not for the first time, the concept of a CCCTB, appears to have come back from the dead. The EU has revived plans to unify the tax base across Europe in an attempt to clamp down on alleged multinational tax avoidance.

The revival of these plans came amidst sweeping reforms being made or proposed under the **OECD**'s BEPS initiative, putting global companies under more pressure than ever to adapt to a rapidly evolving international tax system. However, it is suggested by some that a consolidated tax base would yield a much simpler tax system and reduced tax compliance requirements in individual countries. What is likely, however, is that all the rhetoric about a move towards a CCCTB, realistic or not, the level of tax competition between EU member states may in fact increase. The expectation of a trend towards increasing competition amidst an increasingly harmonised global tax system was made clear in Taxand's 2015 Global Survey which found that 83 percent of multinationals believe tax competition will increase over the next five years. The CCCTB is fraught with political complexity and difficulties in implementation. It would demand the support of 28 countries to reach approval and the UK remains opposed to it, despite some concessions by its originators. Notwithstanding the conceptual attractiveness of a CCCTB, opponents to the initiative rightly point to the fact that the concept favours the larger EU countries and places a concentration on headline corporate tax rates. Instead, a focus on transparency and a simplification of EU tax rules could prove more productive.

Be careful what you wish for…..

Some of the UK's biggest companies are sounding out shareholders about pay rises for their bosses in a move which risks reigniting the controversy over excessive executive pay. The potential increases to salaries would further inflate overall boardroom remuneration as annual bonuses and long-term incentive plans all hinge on basic pay. The increases appear to be driven by changes in the way company directors receive their bonuses. Shareholders have insisted bonuses be paid out over longer periods.

Sarah Wilson, ceo of the proxy voting agency **Manifest,** said: "We've been hearing that there are lots of companies saying their chief executives need 20 to 30 percent pay rises for their basic salary … and that is going to go down like a lead balloon. The request for pay rises may be a backlash against longer retention periods."

Top directors tend to be remunerated with salaries, annual bonuses and long-term incentive plans. The latter, which are often paid in shares, were generally based over three years but are increasingly based over longer periods, often five years.

The fund manager **Fidelity** released data showing that a growing number of FTSE 100 companies were adopting longer retention periods. Forty-two now have a minimum period of five years, compared with four in 2013. Banking is one sector where regulation is imposing longer periods when bonuses could be at risk. Bonuses can be clawed back from the most senior bankers over 10 years. Wilson said she would focus on termination payments for departing directors and packages for new recruits this year.

One of the biggest pay revolts of the agm season was over a package compiled for the new head of **Intertek**. The FTSE 100 product-testing company had its remuneration report voted down and **André Lacroix**, its incoming boss, gave up a £560,000 guaranteed bonus offered to compensate him for leaving Inchcape. Data from Manifest shows that Intertek was the only company to have its remuneration report voted down so far this year. The scale of rebellions has almost returned to the levels of the shareholder spring in 2012, which resulted in executives being pushed out of their jobs – notably Andrew Moss at **Aviva.** This was at a time when Vince Cable, who was Business Secretary at the time, was focused on boardroom pay. After a government consultation, companies were required to hold votes on their remuneration reports, which cover their annual pay and remuneration policies that set out the principles they will follow for the next three years. Those policies went to the vote for the first time last year. **Afren**, an oil and gas company not large enough to be in the main index, had the largest rebellion so far when deliberate abstentions were included alongside outright no votes. Afren put two aspects of remuneration to a vote. Almost 55 percent of

shareholders, including abstainers, failed to back either its remuneration report or its policy document, though both votes were formally passed. At **John Menzies**, the distribution and airport handling group, about 52 percent failed to support the pay report when abstentions were included. Wilson said: “There should be no reason why any company engaging with its shareholders should get a high level of dissent … A vote of ten percent or more is a failure of communication somewhere along the way.”

Bankers’ reward supreme

Jamie Dimon of **JPMorgan** regained the title of the world’s best paid bank chief executive last year, and has now topped the table in three of the past five years. His return to first place in the global banking pay leagues with $27.6m comes as new data, compiled by research firm *Equilar* for the *Financial Times*, show that the men who run 15 of the world’s biggest banks took home an average of $14.5m last year, up 17 percent from their 2013 haul. The JPMorgan chief displaced **Goldman Sachs** boss **Lloyd Blankfein** as league leader in a year when 40 percent of JPMorgan shareholders voted against the bank’s pay plan in May. Mr Blankfein fell to third place as he was overtaken by Morgan Stanley ceo James Gorman. Mr Dimon’s pay packet more than doubled year on year while Mr Gorman’s was up 66 percent. Mr Blankfein enjoyed a more modest increase of 11 percent. The totals for all bank leaders include salaries, cash bonuses, stock awards and some other benefits. Stock awards, which make up 56 percent of executives’ average pay, take years to vest and so the ultimate value of their packages could rise or fall depending on how their banks’ shares fare. The least well-paid chief in the group was **Royal Bank of Scotland (RBS)** chief **Ross McEwan**, who received $7.4m for his stewardship of the bank, which is 79 percent owned by the UK taxpayer.

Despite this year’s rises, top pay is far below the $41m earned by 2008’s most highly paid banker, Mr Blankfein. Industry observers do not expect pay packages to ever rebound to the levels before the collapse of Lehman Brothers triggered a global financial crisis. Mr Dimon’s 134 percent pay rise restored him to the top of the reward league after a year when he received a sharply lower package — and fell to seventh — because of fallout from the London ‘whale’ trading loss. The extent of the rise in Mr Dimon’s pay - more than double the previous year - is fuelled by a change in the mix between cash and stock. He was awarded a $7.4m cash bonus for 2014, but none in 2013. The timing of cash and stock payments is accounted for differently under US disclosure rules, which should mean his disclosed pay falls next year.

Morgan Stanley’s Mr Gorman enjoyed total compensation of $23.1m in 2014. Shares in Morgan Stanley rose 23.7 percent last year as investors warmed to Gorman’s efforts to reshape the bank, shrinking riskier activities such as fixed-income trading while boosting the wealth-management unit, which tends to produce steadier income. Both banks declined to comment on their ceos’ compensation. Goldman Sachs’ Blankfein was paid $22.15m in 2014, up from $19.9m in 2013. Last year was a relatively solid one for Goldman, with patchy investment banking revenues offset by falls in expenses for some of the legal problems that continue to afflict its rivals. The best rewarded head of a European bank was **HSBC** chief **Stuart Gulliver**, who made $15.6m, up 34 percent on 2014, even as his bank’s shares lost eight per cent of their value. Among the 15 bank chiefs, only **Citigroup**’s **Michael Corbat** suffered a fall in total pay, although even after the 18 percent cut he still earned $14.45m. **Wells Fargo** kept pay flat for its ceo John Stumpf, while **UBS** ceo Sergio Ermotti’s pay rose just one percent from the previous year.

The ratio of **ceo** to line worker ‘annual compensation’ (pay) in the US has risen from 20:1 in 1965 to 303:1 by 2014, according to latest statistics, said an **Economic Policy Institute** report. Meanwhile, the Dow Jones stock prices index has not even tripled over the same period. It rose from 5,986 to an inflation -adjusted 16,778 last year.

US 401(k) retirement plan fiduciaries in court

Many US employers offer 401(k) and other retirement plans for their employees as part of the cost of doing business. Too often, retirement plans are established and operated without much thought given to the numerous legal obligations that plan fiduciaries have, leaving employers vulnerable to challenges by their own employees as well as governmental agencies auditing their plans. At issue are the investment choices that employers make for their retirement plans, said lawyers *Burns & Levinson*. Plan committees and other fiduciaries in charge of selecting investments for a retirement plan are bound by law to make prudent and diverse investment choices and to monitor those choices periodically. These duties also apply to 401(k) plan fiduciaries who choose the menu of investment options from which employees may select investment of their own plan accounts. The US Supreme Court recently underscored the seriousness of these duties by allowing employees to challenge some fiduciary decisions made years ago.

In *Tibble v. Edison International*, 401(k) plan participants sued plan fiduciaries because of certain expensive mutual funds that the fiduciaries had selected for the plan. The Edison 401(k) plan held $3.8bn and served 20,000 participants. Since it was so large, the Edison plan could have offered investment-class mutual fund options to plan participants that had much lower fees than the identical retail-class funds offered. The employees sued Edison to recover losses suffered by the plan for the extra fees that the plan paid as a result of the fiduciaries’ choosing more expensive retail fund investment options. Edison argued that the participants’ lawsuit was filed too late because the funds in question were added to the plan menu more than six years before, arguing that the statute of limitations had already run. The employees argued that their suit was not time-barred because plan

fiduciaries have an ongoing fiduciary duty to monitor the prudence of fund choices in a retirement plan.
In a unanimous opinion, the **Supreme Court** allowed the employees to sue the plan fiduciaries. The Court observed that because a fiduciary has a continuing duty to monitor plan investments at regular intervals, the participants' claim was not barred by the statute of limitations. The Court observed that a fiduciary's duty of prudence in selecting an investment is separate from the duty of continuing to monitor that investment. Plan fiduciaries, including administrative committees that review plan investments, have some basic duties regarding plan investments. Among these are to make prudent, diverse investment choices. In addition, fiduciaries are obligated to monitor previous investment choices on a continuing basis and remove choices that are no longer prudent. To show that it has met these requirements, a plan fiduciary is well-advised to have periodic meetings to review the investment choices of the plan, and record the empirical data it reviewed in determining whether the plan's investment choices are and remain prudent. One important item to consider is the expense ratio of any mutual fund in a plan and whether that ratio is reasonable. Is another class of shares in the mutual fund available at a lower cost? Is the choice of the investment itself prudent? Are plan investments as a whole diversified? Does an investment choice continue to be prudent given its performance compared to applicable benchmarks? These are questions that the fiduciary should ask, answer and document at regularly scheduled periodic reviews to meet the legal obligations discussed in *Tibble v. Edison International*.

Crackdown on corporate tax avoiders

Companies who try to avoid tax could be put into 'special measures' and their affairs will come under greater scrutiny under new proposals to be announced by HMRC. It is expected to launch a consultation setting out the details of plans announced by the Chancellor in his Summer Budget, aimed at tightening up tax compliance rules for large businesses.
The Government is consulting on a number of new policies aimed at cracking down on corporate tax avoidance, including a 'voluntary Code of Practice,' which it says will define the standards HMRC expects large businesses to meet in their relationship with HMRC. In practice, however, this could require companies to follow the spirit of tax legislation, not just the letter of the law, says **Dan Neidle**, tax partner at Centre law firm member **Clifford Chance**. It would effectively force businesses to discuss any grey areas of tax – of which there are many in the UK's complex system – with HMRC before proceeding. Mr Neidle worries that such a 'spirit of the law' approach could harm UK plc. "It would require companies to approach HMRC about any uncertainties, and HMRC would then decide what Parliament would have intended under the law. The business would be bound by that decision," he explained. "The problem is that UK tax law is such a mess that it is impossible to say what Parliament did or did not intend. So, in the end, you are taking a great deal of power and giving it to HMRC officials. You are no longer taxed from law, but on the basis of an official who is in no doubt subject to their own pressure to increase yields. The fear is HMRC will slow you down and do whatever lines their own coffers. You can't start having a debate with HMRC over the spirit of what is intended when you are doing a deal and need to move quickly." The evidence is worth quoting: From: [senior HMRC official] Sent: July 10 2015 To: [tax director at large corporate] "*You may have seen that the Chancellor announced plans in his Summer Budget to increase large business tax compliance. HMRC will lead a formal consultation on the detail of the new measures, which comprise: • increased transparency in relation to large business tax strategies, • a voluntary Code of Practice defining the standards HMRC expects large businesses to meet in their relationship with HMRC and • the introduction of a 'special measures' regime to tackle businesses that persistently adopt highly aggressive behaviour including around tax planning.*
These new measures do not represent a fundamental shift for HMRC, but rather a strengthening of our existing strategy. They are specifically designed to discourage large businesses from pursuing aggressive tax planning arrangements, and to provide additional sanctions against the small minority of large businesses that persist in unacceptable behaviour. We will consult on these measures over the summer, working to a Finance Bill 2016 implementation timeline. Once the consultation is launched, we will welcome questions and contributions from business, so there will be plenty of opportunity for you to shape the conversation at that stage."
The Code of Practice is likely to be voluntary, but Mr Neidle suspects it could become semi-statutory - in a similar vein to the Bank Code of Practice - as companies will come under intense pressure to sign up. Those who don't will look as if they are defending tax avoidance. HMRC could have the power to name and shame those businesses that don't sign up, while those who do, but are considered to have breached the code, will be publicly humiliated. "There has been a bank code

of conduct for six years now. At the start hardly anyone signed up, but last year they put it on statutory footing and said if you don't sign up HMRC can name and shame you," said Mr Neidle. "Presumably they might do something similar here." Chancellor George Osborne has already pledged to tighten up rules on company profits. Last December he announced that the UK will be the first major economy in the world to target tax avoidance by multinationals with a so-called '*Google tax*'. He said the new 25 percent levy on profits diverted from the UK overseas would ensure that big multinational businesses paid their fair share.

Tax advantaged Eso returns to Oz

The **Oz** government introduced some important amendments to employee share plan legislation. The changes improve the tax position for all companies operating employee share plans and introduce some new tax concessions targeted at start-ups. The legislation amended some damaging revisions to share plan taxation arrangements made in 2009, and secured cross-party support. The changes took effect from last month (July). For all companies, there has been a full reversal of the option plan taxation position: any discount on options (and rights) will now be taxed at **exercise** rather than vesting. The 2009 changes had in effect shifted the tax point for discounts on the award of options and shares to the date of award (unless there was a real risk of forfeiture or a disposal restriction). In effect, most options and rights plans were taxed at vesting rather than exercise. There was a possible $1,000 exemption if the plan operated with specific rules but this was available only to those earning $A180,000 or less. These changes reduced the attractiveness of employee share schemes generally and had led to a steep decline in option-based plans.

Where an employee has not exercised previously awarded options because they are underwater (the exercise price for the option is higher the prevailing share price of the company), he or she can now get a full tax refund (previously this was not the case if it was the employees choice not to exercise). There is clarity about premium-priced options (options with an exercise price above the market share price at the time of grant). These options sit outside the ESS taxation legislation and some companies have used these to ensure that their plan fell into the CGT (capital gains tax) regime. There was some confusion, however, about whether these were subject to Fringe Benefit Tax. It has now been clarified that they are not. Rights (options and rights, with no or nominal exercise prices) do not need to have a real risk of forfeiture just a disposal restriction. This opens the way for non-executive directors to sacrifice their fees into plans again (using rights). Finally, the potential to defer income tax on discounts has been extended from seven to 15 years.

Safe harbour valuation methodologies have been created for unlisted companies to reduce the compliance burden. At this stage it looks like this will be based on Net Tangible Assets and this is currently being consulted with industry.

For **start-ups** a new, and very favourable, regime has been created. If a company meets the start-up test they are able to grant options (or shares with a discount of 15 percent or less), and the options and shares (that fall within the 15 percent limit) are not subject to income tax. They are only subject to CGT on disposal and more importantly for options the CGT concession will apply as long as the options have been held for 12 months or more. This is a very significant change and a completely new structure in Australia. To qualify as a start-up, a company must be unlisted, incorporated for less than ten years, resident in Australia for tax purposes (this can apply in certain cases to Australian subsidiaries of multinationals), and have aggregate turnover of less than $50m. Private-equity controlled companies are not necessarily excluded from access to the concession. Eligibility is restricted to those employees holding less than ten percent of the company's equity

Angela Perry, the Chair of **Employee Ownership Australia**, said: "The Government should be applauded for the new start-up regime which is incredibly generous and places Australia on par with countries such as the UK. However, for listed companies the gains are minimal. In fact, for most companies it has added complexity. Companies now have three regimes to contend with: pre-2009, post-2009 and post- July 1 2015". A remaining anomaly is that share scheme members who are made redundant may be taxed on share plan discounts at the point of employment termination. In a series of recent meetings with MPs, Senators, and Ministers in Canberra recently, Angela Perry and **Prof Andrew Pendleton, of Durham University Business School,** encountered considerable sympathy for amending this provision in employee share plan legislation.

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

Esop Centre - IoD 2015: Employee share schemes for SMEs

September 3 @ 9:00 am - 5:00pm

The Centre’s next joint share schemes conference with the **Institute of Directors** takes place on **Thursday September 3** at the Pall Mall HQ of the IoD.

The programme will focus on SME companies and will attract owners, ceos, directors, fds, HR specialists and other key decision makers in such companies. Speakers from Centre member firms will help the SME attendees decide whether to introduce an employee share scheme or to deepen existing employee share ownership in their business. Confirmed speakers are: **Colin Kendon,** Bird & Bird**;** **David Craddock**, David Craddock Consultancy Services; **Mike Gearing**, Fieldfisher; **Paul Malin**, Haines Watts; **Steve Thomas**, HMRC Shares and Assets Valuation; **Mike Landon**, MM & K; **Graham Muir,** Nabarro; **Nigel Mason**, RM2 Partnership; **Stephen Woodhouse**, Pett Franklin & Co**.;** **Robert Head,** Pearson; **Jeremy Mindell**, Primondell.

For further details on the presentations and speaker biographies please visit the event page at http://tinyurl.com/nfc2zha

Delegate prices:
Centre/IoD members: £360 + VAT
Non members: £460 + VAT
If you are a Centre member, contact the IoD events team at events@iod.com or +44 (0)207 766 8919 to register at member prices.

If you are a non-member or IoD member you can register to attend this conference through the IoD website:
http://tinyurl.com/qx5c9qj

For all enquiries, contact Jacob Boult at Esop Centre HQ – email: jboult@esopcentre.com or phone him at +44 (0) 20 7239 4971.

This event is co-promoted by:

Bird & Bird

fieldfisher

mm&k