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it's our business

newspad of the Employee Share Ownership Centre

Minister pledges to fight for more Eso in businesses

Employment Relations Minister Jo Swinson MP told Centre members that the Coalition Government would 'roll up its sleeves and do all in its power' to extend employee share ownership substantially within the UK. "We have to eliminate the barriers which inhibit the installation of employee share schemes and employee ownership in UK businesses," she said.

"Over the years employee ownership and employee share ownership have not been nearly as far up government agendas as they should have been. For the workforce is our human capital and must be encouraged accordingly," said Ms Swinson, whose departmental responsibilities include Eso.

"We are showing that we are taking it seriously – for example by having signed up already to most of the Nuttall Report recommendations on how to tackle the barriers. We have ticked the boxes and are getting on with implementation as quickly as we can."

Much more employee share ownership was needed now in large and small companies alike, because such schemes were an important factor in economic growth," the minister added at the fourth annual Centre Awards black-tie reception and dinner in the Oriental Club in London's West End.

After welcoming the minister, Centre chairman Malcolm Hurlston gently warned the government not to risk confusion by running with too many of the proposals and ideas now circulating Whitehall - about how to give Eso and employee ownership a major boost.

"With so many new ideas about now – even the new share scheme from the Chancellor, which I shall call *Not So Much a Share Scheme*, there is a great risk of confusion, but whatever happens or doesn't happen in the end, it is great to see thought and action. With the recession, share schemes are gasping for oxygen and ministers can provide it.

"We shall hope to steer you too, Minister. Members of this Centre took an important role in making sure that EMI hit the button and wasn't easily abusable. If what we say about *Not So Much A Share Scheme* starts with a litany of risks, it means we can help you get it right.

"On another front, I am leading the fight to save the Company Share Option Plan (CSOP) because it's the only share scheme which can give part-timers and the low-paid a share of the action. We should remember that the workforce is our human capital and we must spread the wages of capital, not just the wages of labour," he added

The occasion was a sell-out as 110 Centre members and their guests enjoyed the ambience of the Club, the champagne reception, the speeches, the three-course dinner and the awards ceremony.

The chairman explained that the awards recognise the achievements of companies in employee share ownership and hold up models for best practice for others to follow.

First off was the award announcement in the category - 'Best employee share ownership plan in a company with more than 1,500 employees'- and there were two finalists this year: **Diageo** and **Royal Dutch Shell**. The chairman said that the two finalists were so close that it had been almost impossible to separate them and praised the work of the two Centre Award judges Robert Head of Pearson and Kevin Lim of RBC.

Discussing the finalists in turn, Mr Hurlston said: "Diageo trades in 180 countries and has 24,000 staff,

From the Chairman

I have yet to mount a challenge to the Regulatory Impact Assessment of a government department. The time may be here with £360m each year RTI is means to save. Assessments are often signed off by a minister with no knowledge of the topic, but in this case it was David Gauke. Even so the costs of RTI to the share scheme world are vast and the nonsensical burden on business includes having to send a nil return if you have nothing to report (otherwise you get an automatic penalty notice). Isn't this meant to be a business friendly Coalition expanding employee ownership? As a new year thought, where do best intentions lead us? Intentions are not enough: see the share scheme stats.

Malcolm Hurlston

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who all need a shared sense of motivation. With a mature scheme on an international scale, there are new challenges in making sure employees not only can buy shares advantageously but can deal with them easily wherever they are. Under the basic plan, Diageo employees get a free share for every one they buy. Diageo took steps to ensure that the route was cased and appropriate for each country. Diageo picked up the exchange risk and broking cost. In five countries phantoms were used instead of shares. It arranged for the shares to be curated by Appleby in the Channel Islands and for Collins Stewart to provide preferential service for those who wanted to transact."

Shell's challenge, said Mr Hurlston had been "To make it easier for employee shareholders wherever they were in the world to continue to hold shares as well as to transact if they wanted to.

"The challenge was solved jointly with Computershare with the creation of a Vested Share Account, which is an individualised share account for each participant operating in any currency and Shell shares wherever quoted.

"Each year, some 18m employee owned shares are put into the vested share account and more employees stay committed because it works for them. This is a trail-blazing approach emulated by other leading multinational companies."

What the judges said about the finalists: **Diageo**: We were impressed by Diageo's approach to planning for its International Sharematch Plan (ISMP), which was generated and administered in-house**,** with support from a network of local champions and **Killik Employee Services**, which provided a share plans database. This plan allows employees to make an annual investment of between £50 and £3,000 (or local equivalent) in Diageo shares. It is accessible to all levels of staff, from md to bottling line operators. In return, Diageo matches 1 share for every 3 purchased and these are subject to a three-year retention period in most markets. Purchased shares attract dividends which are invested in more shares to help build up employee participants' portfolios.

We liked the fact that employees were asked to put some skin in the game and that Diageo provided the match to mitigate against employee investment risk.

The Diageo team commissioned **Clifford Chance** and **Deloitte** to conduct a full legal and tax review of the 29 countries where the plan was to be offered. A deal was struck with **Collins Stewart** to provide share-broking services for plan participants.

Diageo was commended for going the extra mile to provide similar 'phantom' offerings and an American Depositary Share version in jurisdictions where rules would have made it difficult or impossible to offer the ISMP plan.

Royal Dutch Shell: Shell's share plan offering was truly global, with its Global Employee Share Purchase Plan now having 29,000 employees contributing in more than 80 countries. **Computershare** was the key advisor in this case. In addition Shell offers a Sharesave to UK employees.

Two innovations impressed us about Shell's share plan offering:

1. The www.shellshareplans.com website and
2. The Vested Share Account to facilitate ongoing share ownership for participants across Shell's share plans.

The website makes use of the new technologies to give links to explanatory videos about the plans and contains all the plan documentation in one easy-to-access place.

Shares from all Shell's plans are released into the employee's Vested Share Account after tax and deductions. This means employees around the world can continue to hold their shares in Shells after the plans vest, thus fostering ongoing employee share ownership.

As tension mounted, Mr Hurlston announced a special award for Diageo, which was represented by Keri Simm. He said the judges had 'Highly Commended' **Diageo** for its International Share Match Plan.

He then announced the winner of the Centre Award for the Best Employee Share Plan in a large company in 2012 was **Royal Dutch Shell** and its advisers **Computershare** for insisting on constant improvement to its share plan offering. Shell share plans manager Pam Roffe received the winner's framed certificate from the minister on behalf of its 29,000 employees worldwide.

Jane Bateman, a senior civil servant from the Department for Business Innovation and Skills, presented the rest of the awards, deputising for the minister who was called away on government business:

The next category of award winners was '**Best employee share plan in smaller companies 2012 (less than 1,500 employees)'** There were three finalists in this category: Henderson Global Investors, imagination Technologies and The London Stock Exchange.

What the judges said: **Henderson Global Investors** is extremely committed to employee share ownership. The share plan offering is comprehensive. There are several plans on offer to the employees – a buy as you earn (SIP), a CSOP and a joint share option plan. In 2011 the company launched an **in-house** new Sharesave plan. Henderson's online tools mean that employees can manage their portfolio across the plans with great ease. Furthermore, Henderson is committed to providing financial education so its employees can manage their financial obligations and make independent decisions about how to manage gains made through the schemes.

We were impressed by the ethos of employee share ownership in the company, the professional share plan communications - that matched their message to events which would be happening at maturity, to get employees thinking about the future and by the take-up levels which have resulted in 12 percent of the company's shares now being in share plan holdings.

Imagination Technologies provides a good news story for employee share ownership. Because of recent growth and their complete commitment to employee share ownership they have had some employees making almost £70,000 profit from its Save As You Earn scheme. The company offers a SIP, and an unapproved joint ownership scheme (TEESP) in addition to the Sharesave. The secretarial team, which maintains an open door policy so anyone can drop in and get face-to-face answers, have had to deal with questions of diversification and CGT liability affecting many of their colleagues and did an excellent communications job around this. The enthusiasm of the share schemes team is matched by the employees of whom around two thirds participate in the Sharesave and the TEESP.

The London Stock Exchange nominated by its advisers **YBS Share Plans** launched its second Sharesave offering this year, extending to employees in Sri Lanka for the first time as well as those in Italy and the UK. We praised the communications for clearly and simply explaining the terms of the share plan. The UK take up of 54 percent was particularly impressive, with average monthly savings at £198. Even in Italy and Sri Lanka where these plans are rare, take up was better than expected at 29 percent and 23 percent respectively.

Centre international director Fred Hackworth announced the winner and runners-up in reverse order:

The London Stock Exchange plc and its advisers YBS Share Plans in recognition that the Group Sharesave Plan Invitation 2012 was **commended** in Best All-Employee Share Ownership Plan 2012 for smaller companies

Imagination Technologies Group plc in recognition that the Tax Efficient Employee Share Plan was **highly commended** in this category.

He then announced that the winner of the Centre Award for the Best Employee Share Plan in smaller companies this year was**: Henderson Global Investors**

Finally Mr Hackworth announced the names of the three finalists Flybe, J.Sainsbury and Whitbread for the Centre's new award category: **Best all-employee share plan communications 2012:**

The judges said: "This is the first year in which the Centre offered an award for all-employee share plan communications. The three finalists faced quite different challenges, but all had to cope with the demands of staff across multiple locations, with little access to computers at work and working often unsociable shifts. Reaching out to the employees, through an array of media, therefore required extra thought.

"2011 was the first time that share schemes had been on offer at **Flybe**, so most of the employees were not familiar with the plans and how they operate. For that reason the communications had to be simple and clear. Flybe and its main advisor **Capita** took the theme *Our Future…Yours to Share*. The SIP used binoculars with the idea of keeping an eye on the company's future and the Sharesave used building blocks for the future. We were impressed that nearly half the workforce signed up for the Sharesave.

"Far from being a first offering. last year witnessed the 30th anniversary of **J Sainsbury plc's** Sharesave plan. As part of the celebrations, 1,000 employees were given 30 free shares after a prize draw. The communications strategy was revamped based upon a survey of what employees thought about past offerings. The booklet was reduced from 16 pages to 6 and as many opportunities as possible were taken to remind employees of the invitation to join the scheme. Advisors were **Computershare.** An impressive new management information tool allowed for more focussed targeting in stores where take-up had been below average in previous years. The communications materials were easy to understand and clearly associated with the wider Sainsbury's brand. We liked the prize draw and the commitment to refreshing the Sharesave and improving on the offering, even after 30 years."

"Whitbread, the company behind Costa, Premier Inn and Beefeater, among other leading consumer brands. The team, with **YBS Share Plans** as lead advisors, faced a challenge because staff often felt closer association to the brand than to the company, so different communications materials were developed for different brands. The character WESS was created for its Whitbread's Employee Sharesave Scheme. The character was ubiquitous across media and brands explaining in a simple and fun way what the Sharesave scheme was all about. The character took away some of the worries around the scheme - that perhaps shares were too complex to engage with - and was successful in reaching out to a new audience of participants – almost 50 percent of applicants were first-timers."

The results were announced in reverse order.

Whitbread Group plc and its advisers YBS Share Plans in recognition that the Whitbread Employee Sharesave Scheme was **commended** in Best All-Employee Share Plan Communications 2012

Flybe Group plc and its advisers Capita Share Plan Services in recognition that the Flybe Sharesave Plan was **highly commended** in Best All-Employee Share Plan Communications 2012

The winner of the Centre's first ever Award for the Best All-Employee Share Plan Communications was:

J Sainsbury

Sainsbury's issued a media release announcing its victory: "Sainsburys has won the prestigious ESOP Centre award for the communication of its Sharesave scheme to recognise Sainsbury's commitment to rewarding colleagues and sharing success. To celebrate the 30th anniversary since Sharesave launched in 1981, Sainsburys held a prize draw, with 1000 colleagues winning 30 shares each. Participation increased by 26 percent, including 7,000 colleagues who hadn't previously joined. In the last year alone, 11,000 employees took a share in Sainsbury's continued success through the Sharesave scheme, which paid out £26.5m this year. Colleagues saw an average 29 percent value increase on their original savings with the biggest savers netting £3,000 each. The value of their shares subject to the maturity over the last six years is more than £139m. Company secretary & corporate services director Tim Fallowfield said: "It is fantastic to get recognition for our Sharesave scheme. We are very proud to be one of the top British businesses for giving colleagues a stake in our business. Sharing our success contributes to a vibrant, strong and engaged workforce, which is why we want to increase the number of colleagues with shares in our business by 25 per cent by 2020."

Confirming the award, Mr Hurlston, said: "Congratulations to Sainsbury's for involving all staff and taking the right steps to ensure they knew what it was all about. The prize draw was a particularly good idea to attract attention to the message."

Jill Evans, head of **YBS SharePlans**, said that it was great to see four of its clients on the short-list for this year's Esop Centre Awards. "To have a client win and others commended is a terrific achievement and speaks volumes for the work that has gone into implementing such successful employee share schemes," said Jill. Henderson Global Investors was its winning client and its other finalists were Imagination Technologies, London Stock Exchange and Whitbread.

"Employee share ownership offers a real benefit to businesses and their staff, given the strong loyalty they foster and the improvements in performance they can deliver," she added. "All four companies have had their share plans developed and managed in conjunction with YBS Share Plans, which administers plans for more than 300 clients across 53 countries and 32 currencies. It is the only mutual in the country providing full administration and deposit-taking services for all employee share plans."

Seasonal Greetings

The Centre team – chairman Malcolm Hurlston, Dave Poole, Fred Hackworth, Tena Prelec, and Juliet Wigzell – wish all *Newspad* readers an enjoyable Xmas and New Year's festive holiday break.

Call for rise in share scheme investment limits

Labour MP Jim Fitzpatrick urged the Coalition to raise employees' annual share scheme investment limits in line with retail price inflation – after successive governments had sat back and watched their real value erode over the years. Mr Fitzpatrick, MP for Poplar & Limehouse, wrote to Treasury Exchequer Secretary David Gauke, pointing out that the individual savings limit on SAYE-Sharesave had remained unchanged at £250 per month for *21 years*, while the employees' annual investment limit for the Share Incentive Plan (SIP) had remained £1500 pa since it was launched, more than a decade ago. He told the minister: *"It is reasonable for those saving in an employee share plan to be able to save more money than is currently the case and that the limit should increase annually in line with inflation. I hope you will agree that those wanting to save a little bit more each month should not be prevented by the government from doing so."*

This is exactly what Centre chairman Malcolm Hurlston wants Chancellor George Osborne to announce in his Autumn Statement on December 5; the Centre having campaigned on this issue for several years. Had the SAYE investment limit been up-rated in line with inflation annually, it would now stand at almost £450 per month, while the SIP investment limit would now stand at £2000 per year. The Treasury's line of defence hitherto against raising the tax-free share scheme investment limits – that very few employees, except those in City banks, were investing the maximum annually anyway – is now shipping water. Some utility companies are reporting that 20 percent – and rising - of their share scheme participants are up against the scheme investment limits.

Members fearful over RTI cost implications

The burden imposed on share plan administration by HMRC's Real Time Information is likely to be considerable, delegates heard at November's plan issuer group meeting, hosted by Centre member **BT**. Around a dozen representatives of plan issuer companies, including British American Tobacco, Hays Petrofac, Reed Elsevier, and Tate & Lyle attended the meeting.

Gabbi Stopp, head of the dedicated service team at **Capita Share Plan Services**, presented on the background of the initiative, its rationale and the main dates to keep in mind before the deadline for all companies to be operating RTI: October 2013. The problems faced by plan managers in implementing RTI were explored. Concerns were raised over possible pitfalls, including interpretation of the 'on or before' rule; changes to the penalty regime and arrangements for notional payments.

Gabbi showed flowcharts detailing the length of the share plan administration processes, especially troublesome in the case of leavers. These had been prepared at the request of HMRC so that they could understand where and why the share plans industry will struggle to comply with the new rules, if followed to the letter.

For many of the companies present the implementation process remains obscure, exacerbated by lack of detailed information about the pilot project. Several delegates voiced their hopes for a grace period before the system of penalties was implemented.

HMRC has responded to these concerns in freshly issued guidance on the penalties regime for RTI . According to the guidance "there will be no penalties if in-year Full Payment Submissions are sent in late" until April 2014.

RTI 'common sense' update

HMRC issued a statement proposing a "common sense approach" to two of the most challenging areas of RTI compliance - internationally mobile employees (IMEs) and share schemes - where employers have a "reasonable excuse" for not complying with the statutory deadline for Full Payment Submissions (FPS).

Crucially, HMRC does not expect employers to depart from reasonable and accepted practice, said Centre member **Deloitte.** However, it does expect that any late reporting of expatriate and/or share scheme income would be made no later than the next regular monthly payroll date, and that the relevant payment of PAYE and NIC due would be made within the normal payment deadlines for that month.

The statutory rules for the reporting of payments made to all employees under RTI are: for cash payments, an FPS must be submitted "on or before" the payment is made; for notional payments (e.g. payments in shares or payments made by an overseas employer to an employee working in the UK), an FPS must be submitted on the earlier of:

- The time income tax is deducted in relation to income (this is when tax is formally deducted through the payroll); and
- 14 days following the end of the tax month in which the income was acquired (a tax month runs from 6th of one month to the 5th day of the following month).
- For all income (payments and notional payments), employers are required to operate and account for income tax and NIC through PAYE no later than 14 days following the end of the tax month in which the income is received (17 days if the payment to HMRC is made electronically). Where an employer is unable to comply with the above rules, or remit the associated PAYE and NIC on time, HMRC will apply a "common sense approach" in determining whether an employer has a reasonable excuse for:
- Failing to report the income on time (thereby avoiding a late FPS filing penalty); and
- Failing to remit income tax and NIC on time (thereby avoiding a late PAYE and NIC remittance penalty).
- In assessing whether an employer has a reasonable excuse, HMRC has confirmed that it does not expect employers to depart from currently accepted payroll practice for IMEs or share schemes. In taking this approach, HMRC expects that:
- An FPS will be submitted including the relevant income no later than the next regular monthly payroll date;
- The remittance of income tax and NIC will not be made any later than the remittance deadline for the following month's payroll run;
- Payments identified after the 19th April following the tax year end must be reported on an Earlier Year Update (EYU);
- Any arrangement where there is evidence of avoidance or manipulation will be challenged. The guidance released by HMRC can be found in the November issue of the Employment-Related Shares & Securities Bulletin. (http://www.hmrc.gov.uk/shareschemes/news/index.htm)

Further details are needed to establish HMRC's view of "currently accepted payroll practice" so employers can be clear on whether they can rely on HMRC's "common sense approach".

Deloitte expects HMRC to release an update to their FAQs regarding expatriate employees in early December, which should provide further clarity in relation to other complexities around the reporting of payments to expatriates under RTI.

HMRC's proposals will be welcome news for many employers with share schemes and expatriates. The "common sense" approach goes some way towards managing the PAYE challenges that employers with these arrangements have, including in particular the late PAYE and NIC remittance penalty rules introduced in April 2010.

However, employers will be concerned regarding the subjective nature of the proposals. Accordingly, they are not likely to rely on this guidance alone without clarifying their proposed approach with HMRC. It is not clear whether the common sense approach can apply to regular and/or frequent late FPS returns e.g. arising from a genuine difficulty in obtaining the requisite information held internationally. If not, employers in such a position may need to consider what changes need to be made to avoid exposure to both late filing and late remittance penalties.

Glasgow Rangers EBT: HMRC loses first round

The former Rangers Football Club did not act illegally when it used employee benefit trusts (EBTs) to distribute money to players and staff, a tax tribunal has ruled, to the great disappointment of HMRC.

Two out of three judges sitting as the First-Tier Tax Tribunal ruled that Murray International Holdings (MIH), the then owner of Rangers, had made the £47.65m disputed payments as loans, rather than earnings. It concluded that the company's tax liability as assessed by HMRC should therefore be reduced substantially.

HMRC said that it was considering an appeal in what is clearly a test case, as other soccer clubs are thought to have set up similar EBTs in the Channel Islands some years ago, before the tax law was changed. "We are disappointed that we have lost this stage of the court process and we are considering an appeal," HMRC said in a statement. "The decision was not unanimous and the diligence of HMRC investigators was acknowledged by the whole tribunal."

Two of the three sitting judges agreed in principle that the controversial sums received by players and staff were not paid as 'their absolute entitlement,' due to the legal structure used. However, the third judge said that the money received by employees through the trust represented earnings, and was therefore liable to income tax and national insurance contributions (NICs). Since the payments had been made as loans rather than earnings, as set out in the terms of each EBT, they could therefore be recovered from the

member of staff or that person's estate, the tribunal said.
Offshore EBTs are validly used on a considerable scale to deliver a range of benefits to employees. However, some of the previous tax advantages were removed in the 2011 Finance Act.

Tax expert Matthew Findley of Centre member **Pinsent Masons** said that the case was not the first that HMRC had lost on the point. However, the fact that the first-tier tribunal had again refused to regard payments made to a sub-trust as liable to income tax through Pay As You Earn (PAYE) or NICs would annoy the tax collectors. "HMRC has made it clear that it objects to EBTs being used to provide loans to employees and its desire to recover what it sees as unpaid tax from this structure will not go away," he said.

"HMRC must, however, start to think about its overall policy in this area, given criticism by the National Audit Office of its handling of tax avoidance schemes and revise its EBT settlement facility in line with the law," he added.

Rangers Football Club was placed in liquidation at the Court of Session. The company's assets had been purchased by a new company last June, and the new club was admitted to the bottom tier of the Scottish Football League.

William Franklin, of Centre member **Pett, Franklin & Co. LLP** commented: "The long-awaited decision of the First-Tier Tribunal in what is known as 'the Glasgow Rangers case' must have come as a major disappointment to HMRC. Its contention is that sums contributed to an EBT, appointed to sub-trusts for members of an employees' family and advanced on loan to the employee, are properly to be taxed as employee earnings received at the time of contribution to the sub-trust. HMRC lost before the Tribunal (albeit on a 2:1 majority), notwithstanding the fact that the arrangements in this instance were particularly aggressive.

"However, HMRC can take heart from the closely reasoned and persuasive dissenting judgement of Dr Heidi Poon, which must increase the odds in its favour of ultimately succeeding on appeal.

"In short, the majority judgement treated the trust structure and the loans to employees by the trustees, as 'genuine legal events with real legal effects,' which could not be ignored (the majority of the judges considering that the decision in ***CIR v Mayes*** ([2011] EWCA Civ 407) had significantly weakened the 'Ramsay principle'). The transactions were not 'shams'. There was not an absolute transfer of funds to employees and hence no obligation to account for income tax under PAYE and NICs on the amounts concerned.

"By contrast, Dr. Poon's approach was to ask if, on a purposive construction of ITEPA, the arrangements involved a payment of 'earnings' (per s 62 ITEPA 2003). On the authority of decisions of the higher courts, the fact that the transactions were not 'shams' did not preclude the Tribunal from considering what is the reality of the transaction as manifested by the documentary evidence and the intentions of the parties. Payment is a practical and commercial, not a legalistic, concept; giving effect to the legal position requires that regard be had to the business substance and a transaction may be 'real' for one purpose, and not for another (e.g. Lord Hoffman in ***MacNiven v Westmoreland Investments Ltd*** [2001] UKHL 6). That funds are "unreservedly at the disposal of the employee" is only a sufficient, but not a necessary, condition for a payment to constitute an emolument (per Walton J in ***Garforth v Newsmith Stainless Ltd*** (1979 STC 129) and Warren J in the ***Aberdeen Asset Management*** case ([2012] UKUT 43). On the facts, the employer and employees had agreed remuneration packages in 'net' terms. The trustees had complied with the wishes of the employer and employees that funds be remitted in accordance with loan requests. In advancing loans on non-commercial terms, the trustees had acted in breach of trust (although this of itself was not relevant to the analysis). No security had been required; there was no intention to collect interest or that the loans be recalled or repaid against the wishes of an employee," said Mr Franklin.

"The employees were intended to have de facto control of the trust funds through their respective roles as 'protector' of each trust and were never intended to repay the funds or account for them. They were indemnified against the financial consequences of the arrangements, and had unfettered access to, and disposal of, the funds assigned to their sub-trusts. In effect, the payments were unreservedly at the disposal of the employees from the time of allocation of the funds to the sub-trusts. *The loans lacked commercial reality (as vouched for by the opinion of the Jersey Financial Services Commission following their investigation of the original trustees)*. Accordingly, Dr Poon concluded that the loans, although real for juristic purposes, stood to be disregarded in determining if there had been 'payments' of earnings made for income tax purposes.

"In Dr Poon's view, the decision in Mayes was not relevant. That case was focused on steps taken as part of a tax avoidance scheme and the application to those steps of a prescriptive legislative code. Here, the focus was on the application of the legislation charging tax on 'emoluments', the broad meaning of which has been defined by decisions of the courts. Furthermore, the question of whether sums were emoluments for the purposes of the charge to tax on earnings took primacy over the application of the benefits code as it applies to loans. The focus in the present case must be on whether the amounts received by the employees were 'emoluments'. In her view, they were," added Mr Franklin.

Barclays and Solium hook up

Barclays Corporate & Employer Solutions (C & ES) has joined forces with fellow Centre member, Solium Capital, to provide global stock & reward services on a one-stop-shop basis. Barclays announced that its C&ES division has signed an agreement with Solium Capital Inc. to create a white-label version of the

Solium Shareworks TM platform and admin services for clients as part of the Barclays C&ES global stock and reward offering.
Barclays C&ES has invested significantly over the past year to build its capabilities, supported by a growing team of UK industry professionals. It said that incorporating the Solium Shareworks administration platform was a significant boost to its global stock & reward offering that would enable C&ES to provide a fully integrated and globally-administered platform with the aim of helping clients to recruit, retain and reward employees. Barclays has been offering these services in the UK for many years and will now service global plans, as well as domestic plans for its clients. In addition, Barclays Group has adopted the platform for the administration of its own global equity and long term incentive plans and has appointed Barclays C&ES as administrator. From November 5, Barclays C&ES began providing administration and brokerage services to Barclays discretionary share and cash plans, which have more than 8,500 participants.
Richard Phelps, head of Barclays C & ES, said: "Barclays Group global equity plans are large and complex, and we are delighted to now be Barclays administrator of choice. By combining the Solium Shareworks platform with Barclays banking and brokerage expertise and our dedicated client servicing team, we can provide an integrated solution, which delivers an exceptional service to corporate clients and their plan participants. With the team we have recruited over the last year and with Solium as a partner we are now ready to fully serve new clients in this area of employee benefits. Solium Shareworks is the premier global solution for equity plan compensation administration. Shareworks is a fully integrated, web-based platform, tailored specifically for global equity compensation plans, with an employee trade-execution portal, industry-leading IFRS2 reporting capability and the most robust real-time global tax functionality in the market. Recognising the increasing challenges in managing stock and reward plans in today's environment, Barclays C&ES aims to make the establishment and ongoing administration of these plans simpler and more effective."
Through its partnership with Solium, Barclays C&ES said that it could now deliver many options in one place: *Access to a dedicated implementation/transaction team; *Brokerage, execution FX and share dealing services; *Offshore and onshore trusteeship (if necessary); *Nominee and warehouse services; *Participant portal, helpline, education and wealth management services, dedicated VIP team; and *First class reporting and administration tools for HR teams.
Brian Craig, md of Solium Capital UK, said: "Solium is proud to partner Barclays to power leading edge solutions and services for its C&ES global stock & reward services. We are confident that Solium Shareworks will provide a strong foundation for Barclays to achieve success as an elite provider of global and domestic equity plan management solutions to a complex and ever-evolving marketplace. The UK and global marketplaces have been under-serviced and the timing is right to bring new solutions and thought leadership to the fore."

Race against time for 'Shares for Rights' plan
Chancellor George Osborne's timetable for implementing his employee-owners 'Shares For Rights' proposal for SME businesses already looks too tight for comfort.
Although the Chancellor told the Tory conference that he wanted his voluntary deal, in which employees could be given up to £50,000 worth of shares in a business in return for giving up employment protection rights, to be law by next April, doubts about this are already emerging.
The *Growth and Infrastructure Bill* – into which the necessary enabling clauses have been shoe-horned - is just starting its Parliamentary progress and the provisions on owner-employees will need to be fleshed out and amended before Royal Assent.
"There is no way this can be in place in time for April 2013, said employment lawyer and barrister Darren Newman. "Employers and employees will need guidance on the new status and how and when it applies. April next year is far too early."
Several Centre members have commented positively and otherwise on aspects of the proposal in the brief public consultation, which closed on November 8.
Centre member **Linklaters** criticised the scheme, which would permit business owners to issue employees with new contracts, reducing their employment rights, in exchange for shares in the company. Lawyers at Linklaters characterised the Osborne plan as "odd" and forecast that it would, if enacted, land HR executives with serious problems. Linklaters lawyer Mirit Ehrrenstein warned: "We have real concerns about how this proposal will work in practice, particularly for start-up companies whose shares may be tricky to value. Employers may well be replacing, on the one hand, a low-level liability for statutory unfair dismissal payments with, on the other, significant costs involved in providing the shares and in buying out employee shareholders who leave." Linklaters colleague Simon Kerr-Davies added: "Companies wishing to offer this type of arrangement should ensure that they do not come up against some difficult discrimination issues, which it is not possible to contract out of. The risk of claims remains. There could be some tricky HR management issues when dealing with a workforce having different employment rights."
Centre member **Ernst & Young** fired a torpedo at Osborne's scheme by implying that current law, right up to a related House of Lords judgement, suggested that when employees received a benefit in return for giving up a contingent right to receive a non-taxable payment, such as a potential redundancy payment

under £30,000, then such a benefit might not be legally subject to Income Tax. Richard Burston, Senior Manager, Performance & Reward, Human Capital, Ernst & Young, Birmingham, said: "Our submission to BIS is fairly detailed and one key point made is that employees should be given credit for the value of certain employment rights given up. If the unrestricted market value of the shares received is worth no more than the rights given up there should be no charge to income tax on receipt of the shares. We refer to the decision of the House of Lords in Mairs v Haughey to support this view." The lack of any mention of Income Tax relief could limit the purchase take up of Osborne's new scheme plan shares, added E & Y.

John Longworth of the **British Chambers of Commerce** said that the proposal was "Unlikely to be a game changer". Others said that the opportunity to sell shares free of capital gains tax would be attractive to many employee shareholders.

It is difficult to assess how many employers will adopt the proposed new employee-owner arrangements, given the administrative burdens involved in Eso, particularly for private companies. Non-listed companies would have to value the shares on acquisition and disposal, as they do for current employee share schemes.

Under Osborne's scheme employers should buy back shares from departing employees at a 'reasonable' value although officials are considering whether in some circumstances it would be acceptable for shares to be bought back at lower than fair market value, presumably where the employee-owner was a bad leaver. In addition employers would have to introduce a mechanism, which would enable the company to buy back the shares from departing employee owners – and that might necessitate an EBT to be put in place.

Significantly, the government has not proposed that grants of shares to employee owners will be free of income tax and NICs so the new tax saving would only benefit the employee-owner on disposal of the shares and will not provide tax savings for employers. Shares given under the new scheme will not be elligible for Enterprise Incentive Scheme or any of the tax-advantaged schemes, however employers will be able to operate these schemes alongside the new arrangement.

The parliamentary Bill said that 'Employee owner' status should be inserted after Section 205 of the Employment Rights Act 1996. The relevant clauses state:

An individual who is or becomes an employee of a company is an "employee owner" if—

(a) the company and the individual agree that the individual is to be an employee owner, and

(b) in consideration of that agreement, the company issues or allots to the individual shares in the company which have a value, on the day of issue or allotment, of no less than £2,000 and no more than £50,000.

An employee who is an employee owner does **not** *have— (a) the right to make an application under section 63D (request to undertake study or training), (b) the right to make an application under section 80F (request for flexible working), (c) the right under section 94 not to be unfairly dismissed, or (d) the right under section 135 to a redundancy payment.*

The following provisions are to be read in the case of an employee who is an employee owner as if for "8 weeks' notice", in each place it appears, there were substituted "16 weeks' notice"— (a) regulation 11 of the Maternity and Parental Leave etc. and (b) regulation 25 of the Paternity and Adoption Leave.

The reference in subsection (2)(c) to unfair dismissal does not include a reference to a dismissal— (a) which is required to be regarded as unfair for the purposes of Part 10 by a provision (whenever made) contained in or made under this or any other Act, or (b) which amounts to a contravention of the Equality Act 2010.

The reference in subsection (2)(c) to the right not to be unfairly dismissed does not include a reference to that right in a case where section 108(2) (health and safety cases) applies.

If legal protection – to employees who refuse the offer - is not provided, then the 'voluntary' tag will look empty. An employer might insist on employee-ownership as a condition of the employee accepting a pay-rise, or a promotion – or might be able to enforce the new scheme on individuals through dismissal and re-engagement, pretending this was just a routine change in terms and conditions.

The Bill does not yet mention the right for the employer to buy back the shares, nor does it give any mechanism for valuing them. However it is clear that the £2,000 to £50,000 brackets are nominal. What will the real value of the shares be?

In the consultation the Government asks whether the buy-back should be at full market value 'or some other level' (ie a fraction of their value?) The consultation asks 'What would the administrative and cost impact be for a company if an independent valuation was required?'

Lawyers *Kingsley Napley* invoked the spectacle of LUC – the *Law of Unintended Consequences* – applying to the Chancellor's proposal. KN said that senior executives and other key employees in SMEs might want to take advantage of Osborne's 'Shares for Rights' plan. It asked: "Why would the average employee be interested in the CGT exemption when they already enjoy (and probably do not have any need to use) an annual £10,600 capital gains tax exemption? Nevertheless whether the scheme is suitable for an employee will depend on the circumstances: notably, the value and growth potential of the shares they are offered, and their appetite for risk. In fact, the scheme could well be attractive for senior executives. Many senior executives already have little interest in unfair dismissal and redundancy rights as the law stands, choosing instead to protect themselves by negotiating favourable contractual terms, such as long notice periods, bonus rights, 'golden parachutes' and so on. *They are used to receiving compensation under* *share schemes and the complete CGT exemption of the shares under this scheme will be of major interest"*

On the move

HMRC's share schemes team in Nottingham has changed its phone contact number to 0845 600 2622, as of December 3. "The new phone system will help us to provide a better enquiry service by directing the calls to the most appropriate person or team," explained an HMRC spokesman.

The **Office for National Statistics** revealed that the average age at which people leave the UK labour force increased for men from 63.8 years in 2004 to **64.6** years in 2010 and for women from 61.2 years to **62.3** years over the same period.

Decision awaited after share buy-back consultation

The Coalition Government on October 30 published a consultation paper seeking views on proposals to deregulate the way in which companies can buy-back shares in order to encourage more employee share ownership. The consultation, which closed on November 16, proposed amendments to the existing rules, including allowing the purchase price for a buyback of shares to be paid in instalments where shares are purchased for the purpose of an employees' share scheme and allowing private companies to use treasury shares for employee share schemes.

The independent Nuttall Review of employee ownership set out the economic and social benefits achieved by employee owned companies. In his review, Graeme Nuttall described the main benefits of employee ownership as being: *improved business performance; *increased economic resilience; *greater employee engagement and *commitment; driving innovation; *enhanced employee well being; and *reduced absenteeism. He made recommendations to Government on removing barriers to further uptake of employee ownership in the private sector.

Alongside this consultation document, the Government published its formal response to the Nuttall Review. The Government is embarking upon a programme of work to implement the agenda set by the review. The consultation forms one part of that agenda, and is in response to a recommendation made by the review.

Nuttall set out two basic models for administering employee ownership. Under the 'trust model' or 'indirect share ownership', an employee trust is established to hold shares in the company on behalf of the employees. Alternatively, under 'direct share ownership' employees hold shares in their company themselves. Companies using this form of share ownership often need a mechanism by which to buy back shares owned by employees who are leaving or who have left the company, in order to re-distribute them to new starters at the company. Otherwise, over time, the company risks becoming predominately owned by ex-employees.

Buy-back arrangements are discretionary and depend on the shareholder (the seller) mutually agreeing a price and/or arrangement with the company (the buyer). In some cases a buy-back arrangement may be agreed between the company and employee prior to the employee taking shares – for example, the two parties may agree that the employee must offer shares for sale back to the company on his or her leaving. In other cases an ex-employee may be approached by the company with an offer to buy back the ex-employee's shares. Once a buy-back has been agreed, companies must comply with a number of company law provisions, which regulate the process. The Nuttall Review concluded that these provisions were overly burdensome, and recommended that Government simplify them in order to remove barriers and disincentives to further uptake of direct employee ownership. Enquiries to: Darren Walcott, Business Environment Directorate, BIS Department, 1 Victoria Street, London SW1H 0ET Tel: 020 7215 1626 Email: employeeownership@bis.gsi.gov.uk

CONFERENCES

GUERNSEY: December 7

There is still time for you and/or a colleague to register for the Centre's joint employee share schemes conference for trustees in the Duke of Richmond Hotel, St Peter Port, on **Friday, December 7**. This annual event, held in partnership with the Guernsey branch of the Society of Trust & Estate Practitioners (STEP), is entitled: ***'A New Start for Employee Benefit Trusts?'*** and will be opened by Centre Chairman **Malcolm Hurlston.**

A senior civil servant from the Department for Business, Innovation and Skills (BIS) will speak and answer delegates' questions. More than 40 people have registered. Delegates will learn how to ensure their EBTs have government support, reflect on the best way to cope with underwater options and share price volatility, and be updated on the most recent legal cases affecting day-to-day decisions as a trustee. Changes introduced by the disguised remuneration legislation have shaken up the trustee world and still present a major challenge to practitioners and their clients. However, the government's endorsement of employee ownership looks like good news for EBTs long-term. The Nuttall review supports the shares-in-trust model enshrined by EBTs and this should spark a wave of new business for Guernsey trustees. Expert speakers reveal the latest regulatory and legislative updates and showcase by example best practice models for Eso. The speakers are: **Graeme Nuttall**, of Field, Fisher & Waterhouse and adviser to the UK government; **Jane Bateman,** BIS**; David Pett**, Pett, Franklin & Co.; **George King IV**, RBC Wealth Management; **David Craddock,** David Craddock Consultancy Services**; Paul Malin**, Haines Watts, and **Alison McKrill**, STEP Guernsey. Tickets cost £295 for Centre and/or STEP members and £425 for non-members. For registrations, contact Tena Prelec at the Centre on 020 7239 4970 or email: tprelec@esopcentre.com.

DAVOS: February 7 & 8

Michael Bussa, tax partner in the New York office of Ernst & Young, will speak on *'Making sense of equity compensation tax traps facing highly mobile employees and their employers'* at the Centre's 14th Global Employee Equity Forum, on **Thursday February 7 and Friday February 8** at the five-star Steigenberger Belvedere Hotel, in Davos Platz, Switzerland. Another star attraction will be the Eso plan case study to be presented by new Centre member **Imagination Technologies.** Ceo Tony Llewellyn and his new assistant company secretary Lauren Brown will be the co-speakers.

Centre members Appleby Global, Computershare Plan Managers and RBC Corporate Employee & Executive Services are co-sponsors of the Davos conference e-brochure. **Appleby Global** is a leading provider of offshore legal, fiduciary and administration services. Contact: Patrick Jones, partner, Appleby Trust (Jersey) Ltd. Tel: +44 (0) 1534 818390.

Computershare Plan Managers has more than 20 years experience in administering the full range of employee equity plans, offshore trustee services and ISAs using all the technology implicit in being part of the world's largest registrar and Eso plan provider. Contact: Martyn Drake, director, Tel + 44 (0) 7790 558 757 and email: martyn.drake@computershare.co.uk

RBC Corporate Employee and Executive Services (RBC Cees) provides employee benefit plan and fund administration services to companies worldwide. Contact: Kevin Lim, associate director, Tel: + 44 (0) 20 7002 2420.

The Davos E-brochure, which contains the full programme, can be accessed on the Centre's website at www.esopcentre.com/davos-2013-brochure.

Other speakers include: **Malcolm Hurlston** Chairman, Esop Centre; **Arne Peder Blix**, president & ceo, Accurate Equity; **Alasdair Friend,** associate, Baker & McKenzie LLP; **Justin Cooper**, chief operating officer, Capita Registrars; **Fred Whittlesey**, principal consultant, Compensation Venture Group Inc; **Mike Pewton,** ceo, GlobalSharePlans; **Jeremy Mindell**, senior reward & tax manager, Henderson Global Investors; **Mike Landon**, executive compensation director, MM&K; **David Pett**, partner, Pett, Franklin & Co. LLP and **Alan Judes**, MD, Strategic Remuneration. **Don Drybrough.** VP Corporate Solutions, of Solium Capital (UK) will deliver a presentation too. **Peter Mossop,** director of executive incentives**,** Sanne Group**,** chairs the trustee panel on EBT and plan admin issues and the Q & A session. Almost 40 people to date have registered for this event.

Delegate fees for our two nights half-board accommodation + conference + cocktail party package deal are: Centre member practitioners (service providers) **£905** and no VAT**;** Eso plan issuer members **£535.** Rates for **non-members** are **£1,425** for practitioners and **£665** for plan issuers.

Register now by email to fhackworth@hurlstons.com with copy to esop@esopcentre.com

Yorkshire 2013

Contact David Poole if you are interested in speaking at or attending an event in Yorkshire on March 7 2013. The event will be an introduction to employee share ownership at the offices of Centre member **YBS Share Plans. KPMG** will be among the other speakers.

Save the date: April 19, Jersey

The Centre is now accepting speaker proposals of interest to a trustee/trust law audience for the Centre's annual joint share schemes conference with the Society of Trust & Estate Practitioners **(STEP**), Jersey branch, on Friday, April 19 2013 in St Helier. Send your proposed slot title along with three headline bullet points to Centre UK director Dave Poole at: dpoole@esopcentre.com.

BARCELONA: June 6 & 7

Four speakers have already confirmed their slots for the Centre's 25th annual conference at the five-star ***Le Meridien Hotel****, la Rambla, in central Barcelona, on* ***Thursday & Friday June 6 & 7 (2013).*** *They are:* ***Joe Saburn*** *of Ogletree Deakins, one of the biggest US employment law firms;* ***Phil Ainsley*** *of Equiniti, who is putting together a client case study;* ***Mike Pewton*** *of GlobalSharePlans and* ***William Franklin*** *of Eso law firm, Pett, Franklin & Co. Ltd. Would-be speakers at this major European event should contact Centre international director Fred Hackworth asap (email:* ***fhackworth@hurlstons.com****) Confirmed speakers qualify for a substantial reduction (from £995 to £860 and no VAT) in the Centre's two nights half-board accommodation + conference package deal attendance fee.*

Eso fighting tough climate, HMRC stats confirm

Employee share ownership schemes are facing a tough battle to gain and retain employee savings and loyalty against the still dismal economic background, the latest HMRC statistics revealed.

Only the Share Incentive Plan (SIP) has remained stable in recent years, as 880 live schemes were recorded at the end of the tax year in April 2011, compared to 870 live schemes in 2007-8, according to HMRC. However, its policy of counting every share purchase, including those made monthly, as an employee 'event', has sparked off a debate about what is the real number of UK employees signed up to SIP and whether that number is rising or not?

Using the last decade's SAYE-Sharesave statistics as a crude yardstick, we can determine that, on average, around 650 employees per company have contributed each year to a typical Sharesave scheme. Using the same multiple for the SIP, it may be that up to 600,000 employees contributed to the SIP in the tax year 2010-11.

The number of live schemes for both the Company

Share Option Plan (CSOP) and SAYE-Sharesave were down again, according to new HMRC tables updated in October.
The number of live CSOP schemes in 1998-9 was an extraordinary 4590, in which 280,000 employees were granted share options. By 2010-11 however, the number of live CSOP plans had shrunk to 1800, in which only 40,000 employees were granted share options. What seems odd about this statistic is that, when averaged out, there are apparently only 22 employees per CSOP. Part of the answer could be that many more SMEs still use the CSOP than previously thought, for example those that cannot qualify for the Enterprise Management Incentive (EMI) scheme.
Meanwhile, the number of live SAYE schemes had slumped to 680 by April 2011, compared to 830 schemes in April 2008, a fall of 18 percent. Nevertheless, more than 420,000 employees were granted SAYE options during the tax year ended April 5, 2011.
Tracking back to SAYE's peak year of 1998-9, when there were 1,400 live schemes, in which almost one million employees were granted options, the Income Tax relief forgone by the Treasury was a colossal £390m, compared to just £60m of 'lost' Income Tax in 2010-11.
Same story for the CSOP – an Income Tax loss to the Treasury of £315m in 1998-9, compared to just £40m worth of tax relief in 2010-11. Ditto for the popular EMI share option based scheme, in which total forgone Income Tax relief has slumped from a peak of £210m in 2006-7 to £90m in 2009-10.
The collapse of stock markets round the world was surely the main culprit for the declining level of participant scheme exercises and tax relief during those years.
Statistics are often deceptive and never more so than in the case of EMI, where company usage of the scheme seems to have declined by 23 percent between 2007-08 and 2009-10, down from 2850 to 2190 companies who granted EMI options in these respective years.
However, this statistic does *not* allow for the thousands of other SME companies who have granted key employees EMI options in previous years and who remain within the scheme, despite not having doled out more options recently.
MM&K's executive compensation director Mike Landon took up the statistical cudgels in a recent article in *Boardwalk*. Mike attacked the ludicrous number of 4,080,000 SIP participants given by HMRC as purchasers of partnership shares in 2010-11, arrived at by counting every monthly purchase as an 'individual participation'. Instead, he put the number of employees getting SIP free shares in the previous year as 172,000 and the number of employees buying partnership shares as 282,000. No figure was given for matching shares.
In separate tables, based on the HMRC statistics, Mr Landon gives the *average* number of SIP participants as around 850 per scheme in 2008-9. For SAYE, he gives an *average* number of 800 participating employees per scheme in the same year. This led him to conclude: "All-employee plans are now mainly to be found in larger companies. On this evidence, they are not getting through as much as we would want to the SMEs."
Centre UK director Dave Poole believes that the SIP statistical debate should refocus around the number of *contributing* employees, rather than *participants.* Dave explained: "You've got employees going back many years participating in SIPs. You only have to look at the dividend shares of 510,000 to see that and they can only be once per year. While the overall number of live plans has fallen since 2006/07, the number of plans that appropriated shares has remained fairly steady at between 490 and 530 since 2004-5. The major difference has been the falling away of free shares from peak of 760,000 in 2005-6 to 170,000 in 2009-10, which can be attributed to the economic crisis."
In *Boardwalk,* Mike called for wholesale changes in the shape of HMRC's Approved share schemes. He said: "None of the Government's current initiatives looks likely to result in a significant expansion of employee ownership. The only realistic way of doing this is to increase the flexibility of the tax-advantaged share plans. CSOP is currently the most flexible of these plans but it only allows for full-priced share options to be granted. It would fit in much better with current remuneration practice if CSOP options could be granted at a discount, or at nil cost, while (as for EMI options) only giving income tax relief for any increase in the value of the shares over the price at grant. The requirements for the two all-employee share plans – SIP and SAYE – are far more detailed and prescriptive than they need to be. By removing the unnecessary provisions, these plans could be much simpler to implement, administer and communicate to employees.
"The Government could of course argue that, by making tax-advantaged share plans more popular, this would increase the cost of the tax relief. But if it really believes the evidence of the economic and social benefits of share ownership, the resulting boost to the economy should more than compensate for this extra expense."

New member
The Centre is pleased to welcome into membership **GlobalSharePlans.** Since its launch in 2006, GlobalSharePlans has established itself as the leading provider of regulatory information (legal and tax) for international employee share plans. GlobalSharePlans has developed its online database of information covering 152 countries with information supplied by a network of quality local law firms. Providing the database as an online subscription service to assist multi national companies in managing their compliance issues in an efficient and highly cost-

effective way. The service covers the entire range of equity instruments (options, share purchases, SIPs, LTIP, cash based alternatives etc.). A secure log in and a tailored online service gives its clients access to quality information set out in a clear and practical way that is relevant to their needs. By accessing the site, clients can manage their compliance, create plan and employee documentation and record their global compliance plus numerous other features.

GlobalSharePlans supports many clients directly both through the provision of the database and through effecting filings on their behalf. It has extensive experience of filing in most countries throughout the world, from Australia to Zambia. It has handled SAFE Registrations in China, South African Reserve Bank registrations, as well as SEC filings in Australia and the US. It works alongside other providers, administrators and law firms, especially Linklaters in London. GlobalSharePlans' clients include some of the world's largest listed companies, such as BP, Exxon and Vodafone, as well as unlisted companies and smaller businesses based in many countries worldwide. Mike Pewton, the founder and CEO of GlobalSharePlans, trained as a solicitor and worked at Linklaters and Deloitte before establishing GlobalSharePlans in 2006. He is supported on the legal side by Steve Kavanagh and Elaine Western, both of whom trained in the Linklaters employee share plans team. The IT side of the business is critical and GlobalSharePlans employs four full-time programmers. As well as constantly innovating the database and online services, GlobalSharePlans is currently focusing on a range of tailored apps for mobiles and tablets.

"We combine quality legal and tax advice with delivery through technical innovation," said Mr Pewton. For more information, please see the website: www.globalshareplans.com

Contacts: Mike Pewton - mpewton@globalshareplans.com tel +34 659 407175 and/or

Steve Kavanagh - steve@globalshareplans.com tel 0208 335 4259

Disguised Rem claims banking victim

Almost 2,000 UK JP Morgan Chase & Co employees are being asked to pay back taxes after HMRC ruled that their EBT was illegal *ex post facto* under the new Disguised Remuneration rules. In a letter to the bank's tax department - seen by *Sky News* - HMRC said that the employees concerned would have to pay backdated income tax and NICs by December 7 this year. The decision affects those employees who were beneficiaries of any of four specific EBTs set up ***before*** the Disguised Remuneration legislation came into effect, or participants in a 2010 executive retirement plan. JP Morgan Chase & Co has agreed to pay 12.8 percent NICs contributions for those employees who have accepted HMRC's settlement terms. A JP Morgan Chase spokesman told Sky News: "Our employee trust has always been transparent to HMRC and its independent trustee has consistently paid taxes in accordance with UK tax law. In addition to taxes paid by the trusts, JP Morgan Chase has paid, on average, more than £1bn in Corporation and payroll taxes annually to HMRC over the past decade."

INTERNATIONAL

Ireland

The Irish ProShare Association told its annual conference that employee financial involvement has an important role to play in boosting Ireland's competitiveness and aiding economic recovery. A recent study carried out in the UK showed that share ownership gave employees the incentive to work harder and innovate more. It found that between 2008 and 2009, employee-owned companies saw sales growth rise above 11 percent compared to less than one percent for non-employee owned companies. Productivity in those companies was assisted by much lower absenteeism (13 percent lower) versus those whose shares aren't more widely spread. "As a small open economy, it is vital that we remain competitive," IPSA chairman Gary Boyle said. "Research has shown that employee financial involvement can increase the efficiency and profitability of organisations without adding to their costs, which enhances competitiveness and employee engagement."

Bonus Corner

Leading companies should avoid handing disproportionately large pay rises to their executives, the Association of British Insurers (ABI) urged in a call for simpler, less complex remuneration packages for senior executives.

The ABI is pressing companies to consider ways to reward boardroom directors on measures other than financial performance, in a new set of pay guidelines. Remuneration committees should choose an "appropriate" measure tailored to their company's circumstances, rather than one that maximises payouts, it warned. The ABI, whose members control about a fifth of the stock market in pension funds and insurance policies, is asking remuneration committees to ensure that they award just one annual bonus and one long-term incentive plan (LTIP) in contrast to the range of pay schemes currently offered to top bosses.

On the back of the 'shareholder spring', the ABI wants companies to be aware of the salaries of employees in the wider workforce when awarding pay rises at the top. While the ABI does not demand that companies publish the ratio between the pay of an average employee and the boss in the boardroom, its comments demonstrate that the pay discrepancy will be one of the issues in focus in 2013.

"Shareholders continue to be mindful of employee costs generally, and executive pay specifically, in the context of the general finances of the company, including its investment and capital needs and returns to shareholders," the guidelines said.

Robert Hingley, the director of investment affairs at the ABI and former Lazards banker, said

said that the move to simplify pay schemes was an

effort to reverse the "***bull market arms race"*** that had led to fiercely complicated schemes.
"The ABI guidelines represent UK best practice. They aim to ensure remuneration committees set remuneration structures which are clear and simple, removing unnecessary layers of complexity and ensuring that pay is clearly linked to performance and that shareholders' interests are protected, " said Mr Hingley.
"There have been complaints from investors about the complexity of remuneration schemes. There was a proliferation of different plans when companies were seeking to find imaginative ways of providing long-term incentives – it was part of the bull market arms race. Most have made a significant effort to simplify their schemes, but the principle is important."
The ABI wants companies to choose one single scheme and stick to it, effectively ending the practice that saw some companies add so-called 'share matching' schemes and complex option programmes to long-term incentive plans. The investor body wants each remuneration committee to pick a metric that suits their company.
"What is an appropriate measurement will differ whether you are Thames Water, Vodafone or Royal Bank of Scotland," said Mr Hingley. "For example, for RBS to use a total shareholder return measurement when the bank is going through a big restructuring over the next few years might be a bit odd and another measurement might be more appropriate."
He added: "One of the problems we've seen is that earnings per share measurements have in some cases been an incentive to gear up the balance sheet. Remuneration committees need to choose a suitable measurement – and then include in their report a detailed explanation as to why they have chosen it."
This is the latest update to ABI guidelines which were reviewed in 2011 for the first time in five years when shareholders expressed concern about the spiralling levels of directors' pay, partly caused by the race to keep pace with rises handed to their peers.
No single sector is singled out but the ABI stressed: "Complexity is discouraged. Shareholders prefer simple and understandable remuneration structures; simplicity can be improved by limiting variable remuneration to an annual bonus and one long term incentive scheme."
The guidelines were welcomed by the Department for Business, Innovation and Skills (BIS) which is introducing measures to give shareholders more powers to clamp down on boardroom excess. From next year, firms will be required to publish a single number for an executive's pay to avoid the situation where numerous figures can be produced due to the complexity of bonuses awarded in the past and in current years.
"We welcome the ABI's emphasis on simplicity in pay and long term incentives linked to company strategy and performance. We encourage all shareholders to engage with the companies they own and drive this change, and with the new reforms we are bringing in next year, they will have even more power to do so," BIS said.
The ABI called for the proposed disclosures from companies to include details of basic salary, with the scope for rises in the future; annual bonuses; the grants of shares as long term incentives; when those plans will pay out including pension provision.
"Under the current [BIS] proposals, there is no specific requirement for companies to disclose the [remuneration] committee's positioning of remuneration potential against peers. Investors find this form of disclosure informative and think it should be included as a matter of course," the ABI added.
The ABI repeated its concern about the overall size of some executive remuneration packages. "Undeserved remuneration undermines the efficient operation of the company. Excessive remuneration adversely affects its reputation and is not aligned with shareholder interests. Shareholders are likely to object to levels of pay that do not respect the core principles of paying no more than is necessary and a linkage to sustainable long- term value creation," the guidelines warn.
The ABI warned that agms in 2012 had shown shareholders were prepared to vote against or abstain in the votes for non-executive directors, who must now stand for annual re-election. "Shareholders will scrutinise but not micro-manage" setting of executive pay, which is carried out by non-executive directors."
The **BBC** was accused of "hosing down" senior managers with money after admitting it had given ten executives more than £4m in pay-offs in the past two years. MPs on the Public Accounts Committee expressed their incredulity at the scale of the severance packages and compared losing a job at the BBC to 'winning the lottery.' The BBC faced criticism after admitting that George Entwistle, the ex-director-general, was given £45,000 in perks and legal fees on top of his £450,000 pay-off. His payoff, however, was eclipsed by Caroline Thomson, the BBC's former chief operating officer, who was given a £670,000 severance package after leaving when she missed out on the top job as director-general. Mark Byford, the former director of journalism, was given a £949,000 pay-off, while Sharon Baylay, director of marketing, was given a pay-off of nearly £400,000. The BBC disclosed that Mark Thompson, the former director-general, was paid for two month's 'gardening leave' at the licence-fee payers' expense, totalling £102,100.
Bonuses for London's financial sector employees will more than halve this year to 'just' £1.6bn in total, due to falls in deal-making and growing public pressure over alleged 'excessive' bonuses, according to a report by the **Centre for Economics & Business Research** (CEBR). This year's total City bonuses, expected to be paid out in January or February next year, probably will be around 86 percent down on the £11.5bn paid out for 2007, just before the onset of the global financial crisis, said the CEBR. It had originally predicted that bonuses this year would total £2.3bn,

but City job losses, increased regulation and a further slowdown in stock trading and mergers & acquisitions (M & A) have aggravated the situation, it added. CEBR expects overall bonus levels to slide further until 2015, before slowly recovering again. “The biggest loser from this is the taxman who typically earns more from City bonuses than the employees themselves,” said CEBR ceo Douglas McWilliams. Government revenues from the City would be around £40bn this year, compared to £70bn in 2007-8, he added.

However, *total* pay and benefits of FTSE 100 business executives rose by 27 per cent last year to an average of £4m each, despite a backlash against big basic salaries and bonuses, according to research from **Income Data Services (IDS)**. The research firm found that that while basic pay rose slightly – by 3.5 percent on average - and standard bonuses fell - on average by almost five percent - *total* executive packages have been bolstered by a big increase in pay-outs from long term incentive plans (LTIPs), which often comprise deferred share awards, based on a company's performance over several years.

The IDS study found that for all FTSE-100 directors, the value of LTIPs rose by 81 percent from a median of £519,625 in 2011 to £938,888 this year. For ceos, the value of vested LTIPs reached a median of £1.6m. IDS explained that LTIPs are now used by more than 90 percent of the FTSE 100 and are designed to incentivise directors over a longer-term period. Although remuneration committees thought they had done the ‘right thing’ by abolishing short-term bonuses in favour of LTIPs, which technically align the long-term interests of directors with those of the company and its shareholders, the results look perverse in some cases. This is because many LTIPS now maturing were set up in 2008-9, after share prices had plunged due to the global banking crisis. The recovery in share markets has pointed to bonanza LTIP payouts, even though actual corporate performance has not substantially improved. *“The result is an income fruit machine that keeps on giving,”* said Alex Brummer, City editor of the *Daily Mail.* “The trick that pay committees and the advisers have adopted to ensure that directors hit the jackpot is to base rewards on *comparative* performance against competitors, rather than individual targets for each company,” he alleged. “It is possible therefore for a ceo to put in a feeble performance, but still get a handsome pay-out.”

The other big problem over LTIPs was that most of them automatically cashed out in the event of a takeover or merger, said Mr Brummer. “So there is an incentive for an executive director to sell the firm off to the nearest buyer before heading off into the sunset clutching a nice cheque,” he warned.

Steve Tatton, Editor of **IDS Directors Pay Report** 2012/13 made a similar point: “Many LTIPs are based on comparative performance with competitors, rather than their own company’s historical performance, meaning that directors stand to earn a payment even if their company’s performance has worsened – as long as their chosen peer group has done even worse. Shareholders will not take issue with directors’ earnings increasing, provided they are doing so in line with company performance and share price.”

However, the **Towers Watson** 2012 Survey of Top Executive Compensation painted a rather different picture for executive reward patterns ***this year***. It said that the median increase in 2012 was 2.6 percent for ceos in the FTSE 100 and between 3-4 percent for other main board members and executive committee members. “Target and maximum bonus opportunities have remained broadly stable at all levels on a constant sample basis. We note that there has been some variation since last year in the inter-quartile range and in some cases the median as a result of the inclusion of more FTSE 250 companies in our survey,” said Centre member Towers Watson.

Bonuses paid in 2012 (for 2011 performance) are lower as a *percentage of maximum* than those paid in 2011 (for 2010 performance), it said. “The median face value of LTI awards has decreased a little for the board and executive committee positions, whilst remaining broadly consistent to those observed last year for other reporting levels. This may be owed more to samples change rather than to market movement but may indicate that companies are each year taking a fresh view on the face of value of awards to individuals in the light of their contribution and performance. Companies are continuing to tailor the design of LTI plans to incorporate both financial and non-financial measures that are aligned to business strategy,” it added.

Banking supervisor Andrew Bailey wrote to global bank chiefs, asking them to claw back staff bonuses in penance for the scandals - including fixing LIBOR rates, mis-selling loan insurance and overly complex hedging interest rate products. Mr Bailey, head of the **Financial Services Authority**’s prudential business unit, told them that the FSA would be looking for evidence that the banks were clawing back bonuses from those who were involved in the scandals. “Ex post risk adjustment will be a major focus in our 2012 review of your firm’s remuneration policies,” he said in the round-robin letter. “Firms should also forfeit or reduce current year’s bonuses, if appropriate,” he added.

Wall Street banks are deflating pay expectations to avoid a replay of last year when cutbacks on bonuses and increased deferrals surprised bankers and traders, said ***Bloomberg Business Week.*** Almost 20 percent of employees won’t get year-end bonuses, according to **Options Group**, an executive-search company that advises banks on pay. Those collecting awards may see payouts unchanged from last year or boosted by as much as ten percent, compensation consultant Johnson Associates Inc. estimates. Decisions are being made as banks cut costs and firms including **UBS** and **Nomura Holdings** fire investment-bank staff.

Some employees were surprised as companies chopped average 2011 bonuses by as much as 30 percent and capped how much could be paid in cash. That experience, along with public statements from top executives, low trading volumes in the first half and a dearth of hiring has employees bracing for another lacklustre year, consultants and recruiters said.

"A lot of senior managers won't have to pay up because they're saying, 'Where are these guys going to go?'" said Michael Karp, ceo of New York-based Options Group. *"We're in an environment where a lot of people are just happy to have a job. Expectations have been managed so low that people will be happy with what they get."*

More modest expectations reflect a new reality as total pay is about half what it was in 2007, Options Group said. Firms are struggling to earn the returns shareholders demand amid higher capital requirements, a proprietary-trading ban and lower deal and trading volumes. Of the ten largest global capital-markets firms, the only one trading at more than book value is UBS, which eclipsed that mark after pledging last month to shrink its investment bank by half.

Goldman Sachs Group and the investment-bank divisions of **Morgan Stanley**, **JPMorgan Chase & Co., UBS, Credit Suisse Group and Deutsche Bank** set aside $38bn for pay in the first nine months, down seven percent from a year earlier, according to data compiled by Bloomberg Industries. These firms have cut more than 9,000 jobs in the past year.

The compensation figures include money allocated for paying salaries and bonuses as well as costs from deferred bonuses in previous years coming due. Wall Street firms typically reserve a portion of revenue throughout the year for employees and sometimes make adjustments in the fourth quarter, such as when New York-based Goldman Sachs reported negative compensation costs by cutting its accumulated pay pool in the last three months of 2009. Spokesmen for the banks declined to comment.

Total pay for investment bankers and traders industrywide will probably fall eight percent, according to the Options Group report. Traders in fixed-income businesses can expect to see a six percent increase in compensation, while pay may decline 17 percent in equities and 13 percent in investment banking, the report added. Employees were stunned by the 2011 bonuses in part because some banks changed their pay structure, said compensation-consulting firm Steven Hall & Partners. Morgan Stanley capped cash bonuses at $125,000, while **Barclays Plc** limited them to $103,000. Credit Suisse paid employees a portion of last year's bonuses in bonds made from derivatives to help the Zurich-based company cut risk and improve its capital position. Some banks clawed back previous years' pay as they handed out smaller or zero bonuses, which traders referred to as 'negative bonuses,' said Paul Sorbera, president of Alliance Consulting, a New York-based search firm.

In a presentation beamed to **Panasonic Corporation** offices worldwide, company president Kazuhiro Tsuga stunned middle managers with the blunt message that their bonuses would be cut by more than a third. Later, he warned investors in Tokyo that Panasonic would lose almost $10bn in the year to March as it writes down assets and restructuring – taking cumulative losses at the 94-year-old firm to $25bn in five years. Tsuga branded the maker of Viera TVs a "loser" in consumer electronics. Tsuga's move and its execution mark him out as a bold leader who is not averse to taking the tough decisions to turn around Panasonic. With local rivals Sony and Sharp, Panasonic is fighting a death spiral of crushed demand in an anaemic global economy, intense competition, a bloated business portfolio and weakened finances.

The ex-boss of the US maker of Kettle Chips will repay two years' bonuses after an accounting scandal. Michael Mendes was suspended as ceo of **Diamond Foods** in February, as was the head of finance Steven Neil. An internal investigation uncovered irregularities, prompting the firm to restate its finances for 2010 and 2011. Mr Mendes left the company with no severance pay and will repay bonuses from the two years worth £1.7m along with 6,665 shares in the company, worth around £54,000. The clawed-back bonuses will be deducted from a $5.4m payment that Diamond Foods is contractually required to make to Mr Mendes' pension fund. However, the company's share price has fallen by 85 percent since its peak in September last year, just before reports circulated that payments to walnut farmers were not being booked correctly. An audit team brought in by Diamond's interim management found that certain payments to farmers and other items had been accounted for in the wrong years, artificially inflating the company's bottom line in 2010 and 2011. Correcting the mistakes forced it to knock $17m off its 2010 pre-tax profits, and $39.5m off its 2011 figure, halving its reported profits over the two-year period.

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