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it's our business

newspad of the Employee Share Ownership Centre

All aboard for the global employee equity forum

Tickets are selling quickly for the Centre's 17th annual global employee equity forum - transferred, exceptionally from Davos to London - which will take place at **White & Case'**s offices, in the heart of the City, on **Wednesday February 10.**

Already, more than 25 Centre members and others have registered for this flagship all-day event, which has attracted sponsorship from long-standing Centre members - lawyers **White & Case** and Channel Islands -based trustee, **Bedell Group.** Among the plan issuers who have registered early are **Imagination Technologies, Prudential** and **RSA.**

This event focuses on the latest reward strategies in companies who install broad-based and executive equity schemes all round the world..

Among the programme highlights, **Tony Llewellyn** of high-tech company **Imagination Technologies** will deliver a case study about how it adjusts its employee equity schemes in both the UK and the US to meet different needs and changing circumstances.

David Ellis of **KPMG** will cast a critical eye on latest executive reward strategies, examining whether there or not there is a justified case for abolishing Long-Term Incentive Plans and whether current performance indicators need adjusting.

Euan Fergusson of **White & Case** will explain how company plan sponsors and their advisers are meeting the rising regulatory and compliance challenge and will comment on whether employee shareholders should be allowed a collective voice at company agms and egms.

Other key issues to be discussed include:

- Corporate governance in overseas share and share option plans
- Global foreign asset reporting
- Top pay unit: open debate on the evolution of executive reward parameters: LTIPs to be axed? Are remuneration committees poodles? The gender pay gap
- How to increase employee share scheme participation
- Linking employee share long-term savings to pensions
- New techniques in administration & communications
- Managing employee share schemes after cross-border takeovers
- Trustee issues: FATCA & the Rangers FC EBT loans case
- Should employee shareholders vote?
- Live case studies of multinational company share schemes
- Accounting for share schemes - about to change again?

Speakers include experts from **White & Case**; the **Esop Centre**; **Howells Associates**; **KPMG**; **Linklaters**; remuneration consultants **MM&K; Imagination Technologies**; **Pett Franklin**; **David Craddock Consultancy Services**; **Solium UK** and trustees **Bedell Group**.

From the Chairman

FATCA, OECD, IASB.. the drum roll of international acronyms is never ending, and they add to the importance of our global gatherings. Davos has gone on the road to London this year, while our summer European event will be in German-speaking Vienna. Both will have unique pluses: White and Case is hosting London where the global topics and expert panels will attract more international companies than ever. From Vienna in June we shall be able to take a view of the promise of all Eastern Europe where experience from the US in particular is changing businesses methods (much amended since the days of Harry Lime). I once met Archduke Otto von Habsburg at the Monarchist Society in Cambridge and enjoyed his famous joke: asked how he forecast the upcoming Austria-Hungary match, he replied; "Who are we playing?" See you next year in London Vienna or both.

Malcolm Hurlston CBE

All at the Centre - *Malcolm, Fred, Juliet, Daniel, Linda, Geoffrey and Louisa* - ***wish members and friends an enjoyable festive break and a riotous New Year.***

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The attendance fees are:

Speakers:

Practitioner members: £225 Plan issuers: **Free**

Delegates:

Practitioner members: £385 non-members: £595

Plan issuers: £195 (*all subject to VAT*)

Registration: To register as a speaker or delegate, please email Fred Hackworth at: fhackworth@esopcentre.com with copy to the Centre at esop@esopcentre.com

If you want to take part, register now to avoid disappointment.

This event gains attendees six hours of credits under the Law Society's CPD programme.

White & Case is hosting the forum in its UK headquarters at **5 Old Broad Street, London EC2**. A buffet lunch will be provided.

Publish the widening pay gap, urges think-tank

Companies should publish the pay gap between their bosses and their workforce in an effort to shame big businesses into curbing 'excessive' executive reward, said a UK think-tank.

"Pay ratios – revealing the gap between what is paid at the top and the middle of a business – could help bring back at least a modicum of shame or embarrassment into our boardrooms," said Stefan Stern, director of the left-leaning **High Pay Centre** (HPC). "If we really want to be 'all in this together', to use a phrase that has sadly fallen into abeyance, a narrower gap between pay at the top and what the rest of the organisation receives would be a positive sign," added Stern.

Data published last Spring by the High Pay Centre and advisory body **Manifest** showed that the ratio of CEO pay in the FTSE100 to their average employee was 150:1 in 2014: average reward for a FTSE100 CEO was £5.2m compared to £34,846 for the workforce, reported the *Guardian* newspaper.

Top executives benefit too from perks that are denied to those outside the higher echelons, from tickets to sports events to general expenses and the costs of chauffeurs, car parking and children's school fees.

In a new report, the HPC said: "Waiving of bonuses has become a modern form of *noblesse oblige*." In 12 years between 1995 and 2007, only 16 company ceoss waived their bonuses while, in the six years to 2014, 15 ceos did not take their bonus either.

Stern said he looked forward to a positive response on pay ratios from **Sajid Javid**, the Business Secretary, whose predecessor, Vince Cable, announced new binding votes on executive pay in 2012.

The pay gap is a topic raised by **Boris Johnson MP**, who told the Tory Party conference in October that social ties would fray if the economic gap between citizens grew too big. In what was a swipe against **Martin Sorrell**, the CEO of the advertising group **WPP,** the London mayor, said: "There are some gigantic self-appointed sequoias that pay themselves 780 times the salary of the little shrublets they employ." In the US companies will be forced to publish pay ratios from 2017.

EDF urged to abandon nuclear stations

Employee shareholders of the French-based utility giant **EDF** are collectively demanding that their employer abandon its key role in the proposed construction of two new nuclear power stations at Hinkley Point in Somerset. They warned that EDF's £18bn project to build the nuclear reactors is so expensive and risky that it puts the survival of the French utility at risk.

The association of employee shareholders — **EDF Actionnariat Salarie (EAS)** — said the interests of EDF were gravely threatened by the Hinkley Point project, "a financial catastrophe foretold" in which EDF had nothing to gain and everything to lose. "EAS asks the management of EDF to stop this risky project, whose financial risks are too big for our company and which could put EDF's very survival at risk," the association said.

This is believed to be the first time that a large group of employee shareholders has collectively and openly demanded that the directors of its publicly quoted employer implement a major strategic UK policy change.

EDF staff own 1.72 percent of the utility's capital, making employees the second-largest shareholder after the French state, which holds 84.5 percent of the total equity, according to *Thomson-Reuters* data.

EDF announced a partnership with Chinese utility **CGN**, which is supposed to have pledged a £6bn investment to build Hinkley Point, *but the two companies have not yet made the final decision to go ahead with the project,* which EDF reluctantly agreed to finance on its already stretched balance sheet after other partners pulled out. EDF, which has to borrow money every year to pay its dividend, faces a €55bn bill to upgrade its nuclear stations over the next decade. It will spend €5bn to install Linky smart meters in coming years and needs to invest billions in the reactor unit of **Areva**, which it plans to buy next year. Investment bank **Investec** advised clients to sell shares in EDF amid fears that its connection with the nuclear plant at Hinkley Point C could put payouts to shareholders under threat. The bank said: "We are unconvinced about the commercial logic of EDF's investment in Hinkley Point C."

Wave of tax demands feared after 'loans' trust ruling

HM Revenue and Customs won a key judgement that the previous owners of Rangers soccer club's use of special employee benefit trusts (EBTs) broke UK income tax rules. Rangers used the scheme from 2001 until 2010 to give millions of pounds of tax-free loans to players and other staff. In a test case, whose outcome may affect thousands of UK companies who have used similar schemes, HMRC claimed these were salary payments and subject to tax.

Earlier HMRC had lost its demand for huge sums in back tax from the Scottish club at tax tribunals in 2012 and 2014, but three judges at the Court of Session (equivalent to the English Court of Appeal) in Edinburgh have upheld its appeal.

The ruling is of great significance to remuneration specialists because about 5,000 British companies have been using this special form of EBT mostly as a reward for top earning talent in niche management or sport. While the legal uncertainty continued, HMRC offered a semi amnesty for those who were willing to settle their tax bills, on relatively favourable terms. It said it has settled with 1,500 companies with similar schemes, raising £1.3bn, but the opportunity to cut a deal supposedly expired in July.

Now many companies who have not settled with HMRC fear a tidal wave of **Accelerated Payment Notices (APNs**) will be launched against them by HMRC in the weeks ahead. Contractors who have used these EBT-based schemes could be first in line, warned the magazine *Contractor Calculator,* whose CEO, Dave Chaplin, said this victory and HMRC's stance on using EBTs in this way suggested that it now felt it had a free rein to take action:

"Until now, the taxman has steered clear of issuing APNs for tax avoidance schemes that use EBTs. That's likely to change and quickly. Contractors who have used EBTs should urgently seek advice from their scheme provider and tax adviser so they can start planning for when, not if, the APN arrives," said Chaplin.

An HMRC spokesman told *BBC News*: "As supported by the decision in this case, HMRC's view is that EBT avoidance schemes do not work. HMRC has a responsibility to make sure people pay what they owe and will always challenge tax arrangements where we do not think they work." He added: "HMRC will continue to settle appeals by agreement where appropriate but will if necessary continue to litigate cases where settlements cannot be agreed."

However, leading share schemes lawyer **David Pett,** partner at Centre member **Pett Franklin,** raised the question whether the court's decision was likely to be overturned on appeal. Mr Pett said: **"**Quite possibly, there are grounds for an appeal given the failure by the Court of Session to explain clearly why, on the facts:

- the payments made were, at the time of payment, properly to be treated as having become 'earnings', notwithstanding that no payment was made to, or for the personal benefit of, the employee; and
- the employee appears to have had no immediate entitlement to immediate payment of the sums concerned, or even to have payments made to some other person at his direction.

"The Court of Session appears to have taken the view that expressing a preference as to whom any payments of salary or bonus should be made, is sufficient to cause any payment so made by the employer in recognition of services to become a taxable 'payment of earnings' per Rule 1 of section 18 Income Tax (Earnings and Pensions) Act 2003, notwithstanding that the employee neither receives nor has any immediate right or entitlement to benefit from the payment. While, from the point of view of an ordinary taxpayer, one has every sympathy with that approach in the particular circumstances of the Rangers case, there are clearly sound arguments that the approach taken goes further than Parliament intended."

He added: "Sadly, it is understood that there is little or no money left 'in the Rangers' kitty' to fund an appeal to the Supreme Court, and it may well be that HMRC has no inclination to prosecute an appeal against the subsidiary submissions that the court rejected."

Mr Pett explained how the Rangers' scheme worked: "Very broadly, the football club established a practice of remunerating footballers and other employees by means of cash contributions to an EBT that, in turn, established and funded sub-trusts for the benefit of each individual's family. The sub-trust would then advance funds to the individual at a commercial rate of interest but on a discounted basis. (The intention of this feature being to reduce the value of the individual's estate for inheritance tax purposes on death.) The individual was appointed a 'protector' of the sub-trust with a power to vary the beneficiaries, and appoint and remove trustees. The operation and benefits of using a trust were explained to each individual as being, in particular, that it would result in the receipt of a greater cash sum than if he received payments subject to PAYE, but that being a protector conferred no absolute beneficial right on the employee to such sums. While the trustees of the principal trust had a discretion over the creation of sub-trusts, they invariably did so when asked. The club paid annual bonuses that were discretionary and paid, in whole or in part, through such a trust arrangement."

HMRC has been using APNs with devastating effect since being granted new powers to fight tax avoidance in July 2014. They enable the taxman to demand tax up-front for avoidance schemes registered under the **DOTAS (Disclosure of Tax Avoidance Schemes**) which can be challenged at will later on by HMRC. Because no appeal is possible, many contractors have suffered financial ruin, losing their family homes and liquidating all their assets as a result of the notices, which had raised nearly £600m by July this year.

The Court of Session Inner House decided in favour of HMRC in *Advocate General for Scotland - HMRC v **Murray Group Holdings** and others* (the Rangers EBT case), reversing the decisions of the Upper Tribunal and the First-tier Tribunal which, by a majority, earlier decided that loans to employees and players from Jersey sub-trusts were loans and not emoluments, so PAYE did not arise. The Upper Tribunal found no reason to interfere with the conclusions of the First-tier Tribunal. However, Lord Carloway, Lord Menzies and Lord Drummond Young have now disagreed. They upheld HMRC's contention that the cash payment made by the employing company to the trustee of the Principal Trust was in consideration of services by the employee, and thus had been 'earned' by the employee. Consequently, the scheme concerned amounted to "a mere redirection of earnings which did not remove the liability of employees to income tax." The judges said that the fundamental principle that emerged from previous cases was clear: "*If income is derived from an employee's services qua (in their capacity as) employee, it is an emolument or earnings, and is thus assessable to income tax, even if the employee requests or agrees that it be redirected to a third party.*"

The Court addressed the question too of whether it was competent to rule on matters of English law, or whether

English law should be treated as foreign law by a Scottish Court and thus a matter of fact found by the Tribunal. It concluded it *did* have 'judicial knowledge' of English law. The scheme's sponsors may seek a final appeal to the Supreme Court, reported Centre member **Deloitte.**

The judges ruled that if income was derived from an employee's services, in their capacity as an employee, it was an emolument or earnings and "thus assessable to income tax". Their decision was beamed at Murray Group companies including the liquidated company RFC 2012 and does not affect the current owners at Ibrox.

The question was whether the reward was part of income for work, or — as has been argued — rather that the trustee would allocate money from the offshore, untaxed trust as loans, each one apparently unconnected with the performance of the recipient.

The Court of Session judges issued a very clear ruling that it was "common sense" and "self-evident" that payments were linked to work. They were merely "redirection of income", and should have been declared by the employer, with tax paid through PAYE. If that were not the case, Lord Drummond Young observed, "An employee could readily avoid tax by re-directing income to members of his family to meet outgoings that he would normally pay: for example to a trust for his wife... or to trustees to pay for his children's education or the outgoings on the family home".

The judges added, caustically*: "The principle is so glaringly simple and straightforward that it seems to have been overlooked by the tax tribunals."*

The judgment ended: "We accordingly conclude that the primary argument presented for HMRC is correct: the payments made by the respondents to the Trustee of the Principal Trust for employees were emoluments or earnings and are accordingly subject to income tax. Furthermore, those payments were made at the time of payment to the trustee of the principal trust, with the result that the obligation to deduct tax under the PAYE system fell on the employer who made such a payment."

Spending Review and Autumn Statement 2015

Chancellor George Osborne announced in his joint Spending Review and Autumn Statement that he is considering the introduction of new legislation in the next Finance Bill to close down any further new **disguised remuneration** schemes, intended to avoid tax on earned income, from November 25 this year. Mr Osborne plans to put a stop to ingenious schemes, such as the one implemented by Rangers FC, which have the apparent effect of by-passing income tax liability on forms of employee reward.

In addition, he is clamping down further on tax avoidance generally by introducing a punitive penalty of 60 percent of tax due to be charged in all cases successfully tackled by HMRC under the **General Anti -Avoidance Rule (GAAR).** The government will introduce small changes to the way the GAAR works to improve its ability to tackle marketed avoidance schemes, reported Centre member **Deloitte.**

*The Finance Bill 2016 will introduce measures to **simplify tax rules** applying to internationally mobile employees who benefit from employee share schemes. These technical changes will streamline and simplify aspects of the tax rules for tax-advantaged and non-tax-advantaged employee share schemes. The move is aimed at providing more consistency and putting beyond doubt the tax treatment for internationally mobile employees of certain **employment-related securities (ERS)** and ERS options. Any charge to tax will arise under the rules that deal with ERS options, rather than earnings. The tax treatment of share options for internationally mobile employees was changed last April, so further changes in this area will clarify those rules which did not adequately deal with all types of options, rather than a further fundamental change in the taxation of share options, said accountants *Kingston Smith.*

*The Chancellor reconfirmed the government's intention to introduce legislation from April 2017 to implement the agreed **Organisation for Economic Co-operation & Development (OECD)** rules for fighting **hybrid mis-match arrangements,** which are defined in the G20-OECD report as arrangements designed to exploit asymmetries between different tax jurisdictions through the use of a 'hybrid entity' which is treated differently under the rules of two different tax jurisdictions. The most common example is a company that is treated in one jurisdiction as opaque for tax purposes, i.e. as a taxable person akin to a company, and in another as being transparent, i.e. akin to a partnership where the profits of the entity are taxable in the hands of its members. Elections under the check the box regulations in the US can give rise to such a mismatch. A 'hybrid instrument' is one characterised differently by two tax jurisdictions, for example, as debt in one jurisdiction and equity in other. The G20-OECD proposals are directed at tax structures involving hybrid entities or instruments that give rise to either a deduction in two jurisdictions, or a deduction in one jurisdiction with no inclusion of the corresponding receipt in taxable income, whether in the same or another jurisdiction.

*The Chancellor said that he remains concerned about **salary sacrifice** arrangements and their continued popularity. The government has announced that it is actively looking into them and will consult interested parties, including employers.

New member

The Centre is delighted to welcome into membership the **UK Shareholders Association,** which is based in Chislehurst Business Centre, 1 Bromley Lane Chislehurst, Kent, BR7 6LH. Its chairman, **John Hunter**, was the Centre's Guest of Honour at the recent Centre 2015 Awards reception and dinner in London's Reform Club. Its contact co-ordinates are: Tel: 01689 856691 officeatuksa@gmail.com

A full profile of UKSA will appear in the next issue of *newspad.* Meantime members are encouraged to apply for individual membership.

Human capital reporting

Human capital reporting was the subject of a special event held by the Investment Association on November 20. It was chaired by IA chair Helena Morrissey and included presentations from London Business School, a number of companies including Centre members Marks and Spencer and the NAPF (now renamed the Pensions and Lifetime Savings Association). There was unanimity about the need for human capital reporting and varying ideas about how it could be done.

Papers were distributed from NAPF and Organizational Maturity Services (OMS) which offered a mathematical basis.

Surprisingly, until raised by the Centre, there was no mention of the impact of employee share ownership on human capital so it offers an important fresh avenue. Equally surprisingly the IA's recently defenestrated director Daniel Godfrey (a recent guest at a Centre high table) was also there. Papers from NAPF and OMS are available to members. The Centre shared the papers and a ringside view with UK Shareholders Association and will be working on adding share schemes to human capital reporting. Comments from members are welcome.

High table dinner

Employee ownership initiatives in Scotland and Northern Ireland were mooted at the Centre's high table dinner for **Representative Paul Mark** from Massachusetts at the **RAF Club** last week. Representative Mark, a Democrat, has a bill before the state House which would give Esops and co-ops first crack at small companies changing ownership. In his constituency Esops and co-ops proliferate and include Ocean Spray of cranberry juice fame.

In the United States, with its long history of devolved administration, many states add their own incentives to federal measures. Now the devolved administrations in the UK have more taxing power and therefore more opportunity.

During an earlier tea at the House of Lords former minister of state Rt Hon Lord Foulkes PC offered to brief the Labour party in Scotland. At the high table Centre members looked at the possibilities with income tax in Scotland and corporation tax in Northern Ireland. The Chairman undertook to raise the topic with the respective governments.

Rep Mark was in London as a guest of William Franklin of Pett Franklin and the dinner drew a powerful selection of leading members to an RAF Club revitalised by a new secretary and new head of dining.

On the move

Brian Cookson who introduced one of the UK's earliest all-employee share schemes died aged 83. Cookson set up an Eso at **BAE** (British Aerospace) where he worked for 25 years, latterly as company secretary. He helped reform BAE's corporate pension scheme and encouraged workforce representatives to join the company's board of pension trustees.

The **Finance Bill** passed through its remaining stages in the Commons on October 26. All the government amendments and new clauses were agreed to. The Bill is substantively enacted for UK GAAP and IFRS purposes. It has been reprinted as amended at report stage. See http://deloi.tt/1kdsCDW. This is the version that will go to the Lords, who cannot change it.

Houlihan Lokey (HL) acquired the investment banking operations of Leonardo & Co. in Germany, the Netherlands, and Spain, and became a minority partner in a joint venture with the management team of Leonardo's investment banking operations in Italy. Leonardo is an financial advisory firm that provides corporate finance, financial restructuring, and other strategic advisory services to clients in a range of industries across continental Europe. The acquisition significantly increases Houlihan Lokey's relationships, country-specific knowledge, industry expertise, and international reach across all service lines. HL has served at the forefront of the Esop movement since Congress legislated Esops into being in 1974 advising trustees, giving opinions on fairness, adequate consideration, valuation and solvency.

COMPANIES

More than one in five employees have signed-up to **Asda's** share schemes this year. Overall participation has increased by 45 percent over the last five years owing to a series of communication projects, said the supermarket giant. It saw the number of employees saving into its share plan increase by 11,888 between 2010 and 2015. It has conducted several communications campaigns over the period, taking membership from 26,212 in 2010 to 38,100 in August. About one in five of Asda's estimated 170,000 workforce is now participating in the share scheme. Senior reward manager Simon Bell said: "Fostering employee share ownership is at the very heart of our business. The advantages of share plans are clearer than ever: reduced absence, fewer leavers, increased working hours and more job satisfaction, as well as tax-free saving and investment for our colleagues. The commitment and hard work of colleagues is fundamental to our achievements, and that means looking after them as part of the Asda family, rewarding them in as many ways as possible and encouraging them to feel they have a direct stake in the success of the business," he added.

Before designing publicity campaigns for the share plans, Asda carried out face-to-face research with many colleagues to test their understanding of the company share plan and how effective they found existing communication. A savings calculator and other online resources were provided while the supermarket prioritised helping colleagues identify with the diversifying business. **Computershare** administers the plan for Asda and conducted the communication programmes. Computershare UK CEO Naz Sarkar said:

"Asda's commitment to its share plan is admirable, and a major factor in its continued success is the way in which they communicate with their staff. Over the last five years they have provided clear, well-designed communications material with a good balance of different, innovative methods to reach their large and varied employee base. Its communications come in a simple, user-friendly style, with clear, simple language and strong visuals to make the subject matter easy to understand and readily accessible to every colleague. By providing and publicising a variety of enrolment methods, they were able to ensure that everyone in their diverse workforce was able to sign up with ease."

Centre member **Equiniti**, now a listed company, employs 3,800 people in 29 locations. It raised £390m in gross proceeds from its recent flotation, with £315m coming via the market. However, Equiniti's largest shareholder, US private equity group **Advent International**, wanted to increase its contribution to £75m in order to reduce dilution of its holding. Equiniti has improved services provided to employees through its ESP portal. It can now reference close period data improving the dynamic messaging available when making sale instructions. More recently a service was added which enables employees to print off a confirmation statement of the shares that have been released to them from an employee share plan. This can be used when an ISA manager requests a notice of exercise/letter of appropriation. Other enhancements have helped participating international employees with changes that include language translations on screens and an integrated account opening process for the global nominee. The ESP portal is easy to customise, presenting employees with the language, screens and online choices relevant to them and the jurisdiction in which they are resident. "These developments are a natural extension for our ESP Portal and continue to make our customer proposition better", says Phil Ainsley. Equiniti increased its holding in the civil service pensions administrator, **MyCSP**, last year to a majority 51 percent stake, with the government's holding reduced to 24 percent, and employees' stake remaining at 25 percent.

A recent boost in the **Royal Mail** share price currently means that the 832 free shares owned by most of its 143,000 employee shareholders are worth more than £4,000 in total.

Mark Price, the outgoing boss of **Waitrose,** declared that capitalism is failing to serve society. The deputy chairman of the **John Lewis Partnership (JLP**) and MD of the group's upmarket food business argued that companies which prioritise shareholder value are responsible for the lack of trust in business. Speaking at the *Telegraph Festival of Business,* Mr Price said companies that maximise employee happiness were contributing to a "fairer form of capitalism". The Waitrose boss said engaged employees would result in a 20 percent improvement in productivity, around 150 percent improvement in company earnings per share and a 28 percent reduction in wastage, quoting statistics from research firm Gallup. "Smart societies cannot be created without fairness, equality and enfranchisement and business has a crucial role to play here," said Mr Price. "Society, quite rightly, expects a lot in return from business for the privileges it is afforded. It's time we all delivered the goods and, in return, we will all benefit from significantly improved performance." The retail veteran said that according to JLP's own research, more than half of Waitrose's customers believe that business only cares about money and nothing else; 56 percent think that business culture is dominated by greed and selfishness and 61 percent agree that staff are seen just as 'resources,' rather than human beings. He stressed there is a gulf in customer perception between large companies and small businesses. Only around 58 percent had respect for large companies compared to 96 percent who were supportive of small companies. Mr Price said businesses paid "lip service" to the partnership model but baulked at putting it into practice because they believed they would have to give too much away. The food boss said that a "partnership lite" model would help "any business not just be a little more decent, but more successful too". He said that linking pay to recognition was a powerful motivator, while sharing information about key decisions with staff was important in creating a transparent work place. Waitrose's staff turnover is a quarter of the retail average, he added. JLP, which owns John Lewis and Waitrose, was the most successful company in the UK that runs on a unique employee-ownership model. At last year's Festival of Business the partnership's chairman, Sir Charlie Mayfield, argued the UK workforce must change radically to achieve a much-needed overhaul of its productivity.

Share scheme users manual

The new Employee Tax Advantaged Share Schemes User Manual (ETASSUM) has been published on the Gov.uk website at: http://tinyurl.com/hyt7e5s

It is set out differently from the previous version. Use the link that is provided on each page to give feedback, which allows HMRC to update manual pages quickly in case of confusion or error. Contact: Hasmukh Dodia, Employee Shares & Securities Unit, HMRC Room G45.

REGULATION

*The **Bank of England** will bring **bankers' remuneration** into line with European Union rules, the **European Banking Authority** said, bringing to a head the conflict between the UK and the bloc over so-called role-based allowances.

Royal Bank of Scotland (RBS) and **HSBC** are among British banks responding by giving employees cash allowances depending on seniority, known as role-based pay, to evade the restriction on bonuses of more than twice fixed pay.

"In the U.K., where the most frequent use" of the allowances was observed, the BoE's Prudential Regulation Authority "will ensure that institutions' remuneration policies and practices reflect the criteria" set out by the EBA, the London-based EU regulator said in its report.

Last October, the EBA banned the use of role-based allowances to boost executive pay. 39 banks in EU countries were using allowances they classified as fixed pay. In most cases, these discretionary payments to staff on top of their base salary "are not fixed, are not permanent," violating the EU's bonus rules, the EBA said at the time. "The Bank of England has already made clear to all firms that it expects allowance structures to be compliant with the EBA report and opinion for the 2015 performance year," a BoE spokeswoman said by e-mail. "All firms have either already implemented necessary changes, or committed to do so subject to shareholder approval of the remuneration policy."

EU lawmakers adopted the world's toughest bonus rules in a bid to clamp down on the gambling culture they blamed for triggering the 2008 financial crisis.

No EU country adopted relevant laws or regulations following the opinion, mainly because final EBA guidelines on "sound remuneration" haven't been completed. The guidelines, which will set out "further criteria to identify both fixed and variable components of remuneration," will be published by year-end, the EBA said.

"The final EBA remuneration guidelines that will address role-based allowances more authoritatively than the EBA has done so far will be much anticipated," said Graeme Standen, a remuneration expert at law firm **Pinsent Masons**. If the EBA sticks to the "rigorous line" set in proposals, the final rules "will have a significant impact on smaller and 'less risky' firms," he said.

*The government announced a further measure aimed at eliminating **gender pay inequality,** requiring larger businesses with more than 250 employees to publish information regarding the bonuses awarded to their male and female employees. This announcement was part of the government's existing strategy aimed at eliminating pay inequalities between men and women, said Carl De Cicco of lawyers *Reed Smith*.

This strategy was first announced in March this year, when the government made known its intention to implement section 78 of the Equality Act 2010 and introduce regulations requiring the mandatory publication of gender pay gap information. A consultation paper was published in July 2015, providing further detail on the proposed regulations. The consultation concluded in September and its results are awaited, as well as draft regulations specifying exactly what will be required and by when. Large employers will be forced to publish information on the average bonuses they pay to their male and female workers, in the latest bid by PM David Cameron to crack down on the gender pay gap. The move will cover the public sector as well as private companies.

*The European Commission launched a public consultation before reviewing and reporting on the application and the impact of the **remuneration rules in CRD IV** by June 30 2016. It wants to obtain information and views from stakeholders on paragraph (b) of Article 161(2) CRD IV, namely on the possible impact of the Maximum Ratio Rule on: (i) competitiveness, (ii) financial stability, and (iii) staff in non-EEA countries. Secondly, it seeks stakeholders' views on the overall efficiency of the remuneration provisions of CRD and CRR. The responses will be taken into account in the Commission's assessment and report required under Article 161(2) CRD, in parallel with information received from EBA, the results of an external study carried out for the Commission and other information available. Members are invited to share responses with the Centre.

*Increasing numbers of market participants and trade bodies in the EU (including the Investment Association and the European Fund and Asset Management Association) are calling for the start date of **Markets in Financial Instruments Directive (MiFID** II) (and the associated Markets in Financial Instruments Regulation (MiFIR)) to be delayed by a year because of complexities in getting the detailed rules finalised and in getting the necessary IT and transaction reporting infrastructure in place. It now appears that EU legislative bodies may arrive at the same conclusion. While the recast MiFID II and the associated regulation (MiFIR) were finalised on May 15 2014 - at which time January 3 2017 was set as the date that the new rules were to come into effect, it was only on September 28 this year that the European Securities and Markets Authority (ESMA) published its recommendations for the detailed rules that financial firms will have to comply with. The RTS and ITS have still to be endorsed by the European Commission (it has a deadline of December 28 2015 to do so) and they must then be transposed into national law in each of the 28 EU member states before they can be complied with by any financial firms - a process that could take at least another six months from the date that the Commission endorses them - whenever that may be. However, any delay would need to be agreed upon between the Commission, European Parliament and Council of Ministers, and would likely entail implementing a further piece of EU legislation to defer the start date.

*Following the introduction of the EU's fourth Anti-Money Laundering Directive (**4AMLD**), and recent G20 talks in Turkey, the UK Government announced that it has agreed to fully implement the recommendations of the inter-governmental body, the Financial Action Task Force on the importance of transparency of beneficial ownership.

The EU's 4AMLD sets out a regime for trusts that is separate from that of companies, and includes a register of trusts that will not be available for public inspection. In line with the 4AMLD, Downing Street this week announced that:

- Trustees of express trusts must obtain and hold accurate, sufficient and current beneficial ownership information for their trusts, including the settlor(s), trustee(s) and beneficiaries, accessibly by domestic competent authorities
- The beneficial ownership information of trusts that generate tax consequences in the UK will be held in a central register, accessible by domestic competent authorities

- Trustees of express trusts will disclose their status, and provide beneficial ownership information of their trusts, when acting in their capacity as a trustee.

EU member states have until June 2017 to implement 4AMLD, but, it remains unclear what is meant by tax consequences for the purposes of the 4AMLD, said Centre member **Appleby Global**. "We expect that any UK tax consequence generated by a trust is caught, but we will have to wait and see if national company UBO -registers and trust registers will be linked at an EU level through a central European platform."

*The **Foreign and Commonwealth Office (FCO)** set out exactly what it requires of its **Overseas Territories** regarding transparency of company beneficial ownership.

The demands stop short of a public central register, but do require that companies or their beneficial owners must not be alerted to the fact that an investigation is under way. The terms were stated in letters to the premiers of the British Virgin Islands, the Cayman Islands and Bermuda in March this year, though not then published in full. They are to form the basis of negotiations with Britain's Overseas Territories at the Joint Ministerial Council. Foreign office minister James Duddridge set out the UK's explicit requirements as:

- UK law enforcement and tax authorities must be able to access company beneficial ownership information without restriction, subject to relevant safeguards
- These competent authorities should be able to quickly identify all companies that a particular beneficial owner has a stake in without needing to submit multiple and repeated requests
- Companies or their beneficial owners must not be alerted to the fact that an investigation is under way. Mr Duddridge said he will use the Joint Ministerial Council meeting "to press the premiers to repeat their commitments to uphold international standards of transparency to ensure the highest degree of effectiveness including on holding beneficial ownership information."
- Most OTs, and the Crown Dependencies of Jersey, Guernsey and the Isle of Man, have indicated they do not want to have central registries. It is now up to them to suggest alternative ways of providing the UK authorities with the information they want without having first to contact the companies or individuals concerned.
- In a separate statement, PM David Cameron made a further commitment to central registers of the ownership of companies and trusts. It reiterates that the UK will have a central register of beneficiaries of trusts that produce UK tax consequences, to be immediately available to the UK authorities, as a well as a central publicly available register of company beneficial ownership. The trust register is likely to be based on tax filings, including filings for automatic exchange of information purposes.

Updated UK remuneration principles

The annual update of the **Investment Association**'s *Principles of Remuneration* (the **IA**, formerly the ABI/ IMA) has few changes from last year, said Centre member **Linklaters.** The Principles were issued with a covering letter highlighting some "Issues of concern to shareholders," listing only two changes to the principles:

- **Five year periods**: For variable pay awards, post-vesting holding periods are now commonly expected, so performance and holding periods together cover at least five years. Previously, the IA only asked companies to consider using additional holding periods. This supports Fidelity's requirement of five year 'retention periods'. Fidelity said last year that it would vote against any non-compliant LTIP.
- **Performance targets**: Companies must explain why any targets are considered commercially sensitive and indicate when they will be disclosed in the future. This is a change from last year, when the IA said that commercially sensitive targets should only be withheld in exceptional circumstances.

However, several key points in the IA's covering letter were of equal importance, namely:

- **Basic salary increases** for directors should not exceed inflation or increases for the general workforce. There should be a clear and explicit rationale to all increases, especially in excess of inflation or above those for other employees.
- **Bonus target disclosure.** Tying in with the change in the Principles, retrospective disclosure of bonus targets is required where they are not disclosed upfront due to commercial sensitivity.
- New directors' **service contracts** should have equal notice periods for both the company and the director and should allow for withholding of pay in lieu of notice where the director is under regulatory, disciplinary or misconduct investigation.
- **Directors' pension arrangements** should be in line with those for other employees. There is concern at complex and expensive pension arrangements which differ from those for the rest of the workforce and concern that pension arrangements are being used to increase pay.
- **Recruitment:** It is not appropriate for newly recruited executives to be protected against the risk of a fall in company value through re-grants of buy-out/sign-on awards.
- **Termination:** Remuneration committees should take a firm approach when deciding leaving arrangements and fully justify treating a departing director as a good leaver.

In addition, the letter refers to the IA's Executive Remuneration Working Group currently considering proposals for a radical simplification of executive pay. The IA expects to make proposals next spring and invites companies to provide their views to the Working Group. For queries, please contact **Gillian Chapman, Graham Rowlands-Hempel, Mirit Ehrenstein,** all at Linklaters.

In his accompanying letter to remuneration committee chairmen, Andrew Ninian, director of corporate governance and engagement at IA, re-emphasised a number of aspects of the Principles flagged by its members: Other than in exceptional circumstances, **salary increases** should be limited to inflation or the increase given to the wider workforce. Any significant salary increases should be accompanied with clear and explicit rationale in the relevant year's remuneration report, with decisions not simply taken on the basis of benchmarking against peer companies. Some investors have started to question whether executive directors should receive regular salary increases at all given the structure of their pay. Although the reporting regulations permit companies to omit targets if they are considered commercially 'sensitive', this should be carefully justified and accompanied with an explicit commitment to disclose the targets at some point in the future. Effective for year-end of December 1 2015 onwards, the IA will **Red Top** any company which does not fully disclose bonus targets or commit to fully disclose targets in a future year. Companies which provide only details of relative achievement (i.e. 'performance was between target and stretch') and no commitment to disclose actual targets will receive an **Amber Top**.

Ignorance is not bliss

Lucky survivor from a recent review the **Money Advice Service**, in conjunction with the **UK Financial Capability Board,** published (Oct 28) a ten-year financial capability strategy. This aims to improve adults' ability to manage money day-to-day, prepare for and manage life events and deal with financial difficulties. A Capability Strategy was seen as necessary because: *About four out of every ten adults are not in control of their finances; One in five adults cannot read a bank statement; Four in ten adults have less than £500 in savings; One in three adults cannot calculate the impact of a two percent annual interest rate on £100 in savings.*

With the predominant attitude being a 'spend today rather than save for tomorrow' and limited financial resilience, the strategy focuses on every key life stage and challenge: children and young people; young adults; working age people; savings; retirement planning; older people and people in financial difficulty, said lawyers *Eversheds*. Specific actions for the devolved UK nations will be delivered in Scotland, Wales and Northern Ireland. Progress will be monitored by the Financial Capability Survey.

Offshore disclosure raises $8bn for IRS

The US **Internal Revenue Service (IRS)** announced that its Offshore Voluntary Disclosure Programme (OVDP), which began in 2009, has led to more than 54,000 disclosures and generated more than $8bn in additional revenue, said US lawyers *Steptoe & Johnson*. OVDP enables taxpayers with exposure to potential criminal liability and/or substantial civil penalties to correct omissions and meet their federal tax obligations, while mitigating the potential penalties of ongoing non-compliance. IRS Commissioner John Koskinen stated that "People with undisclosed foreign accounts should carefully consider their options and use available avenues, including the offshore programme and streamlined procedures, to come back into full compliance with their tax obligations."

Bank account info exchange

The **European Parliament** has approved an agreement under which the **EU** and **Switzerland** will automatically exchange information on the bank accounts of their respective residents, starting in 2018. The agreement complies with the 2014 global standard on the automatic exchange of financial account information promoted by the **OECD**. The EU and Switzerland must conclude the agreement in time for it to enter into force on January 1, 2017, reported Centre member **Deloitte**. See http://deloi.tt/1PUk55o.

The EU and **Liechtenstein** signed a new tax transparency agreement. Under the new agreement, Liechtenstein and EU Member States will automatically exchange information on the financial accounts of their respective residents from 2017.

Meanwhile, the **European Commission** adopted its 2016 work programme, which will include: "a set of measures to enhance transparency of the corporate tax system and fight tax avoidance, including by implementing international standards on base erosion and profit-shifting."

The **Belgian** Federal Parliament recently adopted a new controlled foreign corporation provision, known as the *Cayman Tax,* which allows Belgian tax authorities to look through low-taxed offshore structures to directly tax their Belgian resident founders and third-party beneficiaries on the structure's income. Belgium's introduction of the Cayman tax is in line with the international trend toward increased scrutiny of offshore legal structures that are merely aimed at lowering the tax burden of the founders or controlling shareholders. The Cayman tax may face practical issues, however, and it is unclear how it will interact with international tax principles and European Union law, said lawyers *Stubbe.*

The **International Accounting Standards Board (IASB)** is considering changes to the accounting treatment for share-based payments under IFRS2. The changes would allow an award that is settled net of withholding taxes to be treated as entirely equity settled for accounting purposes, said Centre member **Abbiss Cadres** *of the Celia Alliance* In many countries where companies operate equity incentive arrangements for employees (including the UK and United States), an employee may incur a liability to income tax on the acquisition of shares of which the income tax liability may need to be withheld by the employer and accounted for to the tax authorities. Usually the tax liability will be too great to withhold from an employee's regular monthly salary, and therefore needs to be funded in some other way. Traditionally, UK companies whose shares are listed on a stock market have given their employees the choice to sell sufficient shares to fund the tax liability (also known as a 'sell-to-cover' election). *However, an increasing number of UK companies operate a 'net settlement' mechanism as a way of funding the tax. In essence, a net settlement involves the employee receiving a reduced number of shares (broadly the number they would have received under a sell-to-cover), and the tax liability then being funded by the company*.

There are some significant benefits to net settlement mechanisms; the company does not need to use as many shares, which can help with managing dilution limits, and there is also a saving in terms of dealing costs. In addition, for companies with shares that are relatively thinly traded, or those with a large number of employees with awards vesting on the same day, trying to sell sufficient shares in the market to fund the tax liabilities can be challenging. A net settlement can have negative accounting consequences as it results in an award being partially equity-settled and partially cash-settled. It is due to this that the proposed change to IFRS2, whereby an award which is net-settled is treated as wholly equity-settled for accounting purposes, is likely to be welcomed by companies. There is currently no guidance as to when the changes to IFRS2 would come into effect although it is proposed that the changes would apply to both existing awards that vest after the changes come into effect as well as new awards. There are also proposals to clarify the accounting treatment of cash-settled share-based payments. Companies should ensure that their current award documentation is flexible enough to permit net settlement if they may want to use that mechanism at some point in the future.

Poste Italiane

Divisions between key union representatives helped ruin employees' chances of getting a free shares offer in the partial privatisation of **Poste Italiane**. **CISL**, the union that represents one in two Poste employees, was unhappy with the decision not to involve the employees more directly and called it "a lost chance." CISL Secretary Anna Maria Furland has called for a collective involvement through **an investment fund that would allow workers to participate in the governance of the company**, said the Italian financial newspaper *Il Sole 24 Ora.*

The offer for 38 percent of Poste Italiane – the biggest Italian privatisation for a decade, was three times over-subscribed. The organisation, which covers both mail services and post offices, generates €28.5bn annual group revenue and holds €420bn in postal savings deposits. Only a small number of Poste Italiane shares were reserved for its 142,000 employees. For new shareholders, the €6.75 price would imply a dividend yield of around five percent, as based on analysts' estimates, the group will post a profit around €500m this year. Post Italiane is now listed on the London Stock Exchange. Only 7,522,050 shares were purchased by 26,234 employees of the Poste Italiane Group, though the employee reservation had been twice as much. Postal employees could book up to two minimum lots of 50 shares (with an average value of €350), the purchase of which could be financed by employees asking for advance payment of their legal minimum severance pay. This was as scripted by *newspad* informant **Marco Cilento**, adviser to the **European Trade Union Confederation (ETUC),** who warned months ago that Italian postal workers would not be offered any free shares at all – unlike their UK counterparts.

Bonus Corner

More than three-quarters (86 percent) of public company respondents received some form of stock-based incentive compensation this year, compared to just more than one-third (35 percent) of private company respondents, according to the **Financial Executive Compensation Survey** 2015 report, produced jointly by the Financial Executives Research Foundation (FERF) and Centre member **Grant Thornton**.

In 2015, the average salary increase for financial executives at *private* companies was 4.4 percent, an increase from 3.3 percent in 2014. On the *public* company side, the average salary increase was 3.9 percent, an increase from 3.4 percent a year ago. Both these increase levels are higher than average salary increases in the marketplace, which is around three percent. In spite of higher base salary increases than those at public companies, private company total compensation still lags behind public company total compensation overall. Differences between the two groups are greater than ten percent among smaller organizations and the gap widens as the size of the companies increase. Survey results showed that eligibility for long-term incentives is more than double for public company financial executives compared with private company executives

In an effort to attract and retain talent, some companies are offering sign-on and retention bonuses. Of those companies offering a sign-on bonus, 27 percent reported they are targeting bonuses specifically for retention purposes. The most common offering was a cash bonus (52 percent) as opposed to equity. Slightly more than half (57 percent) of survey respondents indicate that they have a target bonus opportunity.

"Organizations are shifting their focus toward growth, and there is a renewed emphasis on strengthening the finance function and retaining the right talent," said Bill Sinnett, chief operating officer at FERF. "The increases in salaries seen in the 2015 survey results indicate that those in the profession will likely see improved compensation packages in the near future."

***American Apparel** is hoping to give its employees a boost, proposing bonuses to stem a staff exodus as well as funding for the defence of its top executives against lawsuits brought by shareholders and its former ceo. The beleaguered seller of made-in-the-U.S clothing said in court papers that the bankruptcy has hit its workforce hard; it has lost 30 corporate employees and six percent of its retail staff since it filed for *Chapter 11* protection less than a month ago. It operates more than 200 stores around the world. To stem the loss, American Apparel is proposing to pay up to $2.3m in retention bonuses for 82 key employees. The company hopes to encourage the workers to remain during the Chapter 11 case and for at least several months after it emerges from bankruptcy. The bonuses will range from ten to 40 percent of an individual's base salary, with the average bonus payment totalling $22,220. The bonuses not only will be conditioned on remaining with the company but on the achievement of 'personal' goals. Eligible employees work in retail, manufacturing, distribution, customer service, finance and other departments. The 82 employees represent about one percent of American Apparel's workforce.

***Barclays** will pay incoming chief executive **James Staley** up to £8.24m a year after appointing the former **JPMorgan** investment bank boss to one of the most prominent posts in UK business. Staley will join Barclays this month, after sources and media reports said he had been chosen pending regulatory approval. Barclays is, however, handing him shares expected to be worth around £2m to buy him out of bonus schemes he still has from JP Morgan. Staley will be on fixed pay of £2.7m a year – which includes a £1.2m salary and role-based allowance to sidestep EU rules on capping bonuses – as well as annual bonuses of up to £2.1m and a long-term incentive plan of £3.2m. If all those bonuses are met, Staley could receive just over £8m a year – but will be paid £10m in his first year because of the £2m JP Morgan payment. He will receive a relocation allowance to move from the US too.

*__Ceos__ of privately held US companies received a median total compensation package of $360,000 in 2014, including base salary, bonus, benefits, new equity grants and equity gains, and expect total cash compensation to increase 3.1 percent this year, according to Chief Executive Research's latest *CEO and Senior Executive Compensation Report for Private Companies*.

***Deutsche Bank** new co-ceo **John Cryan** said bankers still earn too much money and are often promised rewards too quickly. *"Many people in the sector still believe they should be paid entrepreneurial wages for turning up to work with a regular salary, a pension and probably a health-care scheme and playing with other people's money,"* Cryan said at a conference in Frankfurt. *"There doesn't seem to be anything entrepreneurial about that except the compensation structures."* Cryan, who took over at Germany's biggest bank from Anshu Jain in July, elaborated on his philosophy for paying employees -- even taking aim at his own compensation package -- just weeks after broadly warning that staff bonuses will have to reflect the cost of the firm's fines for past misconduct. Managers need to slow the bonus process so employees aren't rewarded for work before it comes to full fruition, he said. He also expressed concern that too many people have senior titles. The bank needs to 'recalibrate' the way it pays staff to reflect the period they generate value, Cryan, noting that traders generate profits over a shorter period of time than the company's corporate bankers or asset managers. *"We should reflect on people's contribution over a much longer period of time than one year,"* he said. *"Nowadays, there is a "promise to pay first and then be in the ridiculous position where the baby's been given the candy and you've got the difficulty of taking it away."* Turning to titles, he said there are sometimes several layers of managing directors, diluting the importance of that rank. *"There is some value to carrying a fancy card if you are a banker because it is true that you get a better quality meeting with a client if you sound grand,"* he said. *"But for traders, it's prowess that's important. The title is never used in the context of the day-to-day business,"* he said. As part of a cost-cutting plan, Deutsche Bank may shrink the bonus pool for its investment bank, the largest securities firm in Europe, by as much as €500m, or almost a third.

*The ceo of supermarket group **Morrisons** is in line to pocket a multi-million pound bonus – even though the company is expecting sales to fall. Under new objectives David Potts and his fellow directors will not be expected to increase grocery sales over the next three years from the £13bn achieved in the year to February. The previous remuneration scheme dictated that a bonus linked to sales would have been payable if sales rose to £15bn by 2017. But the company has now promised to begin paying out bonuses in 2018 if sales stand at just £12.7bn. Morrisons has already consulted major shareholders about the bonus plan, but the decision is likely to reignite criticisms over executive pay at the retailer. Last January, Morrisons axed its previous ceo Dalton Philips, who presided over a collapse in profits after being routed by the expansion of German discounters **Aldi** and **Lidl.** More than a third of investors rejected the last pay plan after it was revealed by *The Mail on Sunday* that Phillips would get a £3m pay-off. Potts was allotted 1.3m shares in April, as part of the executive Long Term Incentive Plan, which at the time were worth £2.6m – more than three times his salary. The value of the company's shares has since dived by a quarter. At the time the shares were awarded to Potts the group did not reveal the targets at which the bonus would be released. A spokesman for Morrisons said: 'These targets reflect that we are operating in an extremely competitive market, where we are reducing prices and running a business with a smaller number of stores as we concentrate on our core supermarkets.' Morrisons has increased the portion of the long-term bonus linked to increasing free cash flow, which it says will create a healthier business and cut unnecessary spending by directors.

***Whitehall** bureaucrats, many involved in the implementation of welfare cuts, were showered with more than £90m in performance related bonuses last year. According to figures obtained by the *Huffington Post UK*, a dozen government departments handed out £89.4m in bonuses to staff. The true extent could be as high as £140m, because the figures only account for 12 of the government's 20 departments – potentially averaging almost £7m per department. £42.1m of this bonus bonanza was gifted to **Department for Work and Pensions (DWP)** staff, with £38.1m awarded to senior civil servants. Labour MP Andrew Gwynne criticised the government for splashing cash at a time when it continued to talk about "belt-tightening - Whilst the NHS is in crisis, this bonus bonanza would pay for thousands of new nurses", he added. Former Treasury minister Danny Alexander vowed to end bonuses for "run of the mill performance" in 2012, as the coalition government ruthlessly slashed departmental budgets. Since 2010-11 the Government says it has restricted awards for senior civil servants to the "top 25 percent of performers." Mark Serwotka, general secretary of the **Public and Commercial Services**, said the bonus system should be scrapped. "It is unfair and favours the already well paid" he said.

*Executives' bumper pay packets have become more reflective of company performance, according to a new report. In its study, called *Sunlight is the Best Disinfectant*, Centre member **PwC** argued that greater transparency has firmer tied executive bonuses to company performance. By examining FTSE 100 companies over the last five years, the audit giant identified a closer link between bonus payouts and company performance in the years after 2012, when the government announced proposals for better disclosure of directors' pay. Tracking the link between bonus outcomes and performance, where zero percent would suggest no correlation between the two statistics and 100 percent would show perfect correlation, PwC discovered the link grew from six percent in 2011 to 19 percent in 2012. It became even stronger when disclosure requirements came into force, with 2013 and 2014 coming in at 25 percent and 33 percent respectively. The study found that the correlation between executive pay outs and company performance was stronger still for those whose reports contain particularly transparent disclosures. Companies can choose to limit the way they disclose targets set by the remuneration committee if they feel it would give away commercially sensitive information. "Executive pay has remained broadly static in real terms and has become harder to earn since the financial crisis, but trust in the system remains low," said Fiona Camenzuli, pay, performance and risk partner at PwC. "Distrust in executive pay is driven by the belief in some quarters that bonuses don't reflect performance."

***Hire more women for bigger bonuses,** said Jayne-Anne Gadhia, ceo of Virgin Money, who was asked by the government to generate ideas for increasing female representation in finance roles, according to the *Wall Street Journal*. Gadhia spearheaded the review as part of a broader plan to boost the economy's productivity. She suggested that banks should tie executives' bonuses to the number of women who hold senior positions at their organization. She recommended creating an executive role responsible for overseeing diversity and inclusion. The proposal to make part of the pay packages of a firm's executive team dependent on its gender balance was one of Gadhia's preliminary recommendations. She argued that businesses would increase productivity and improve results by encouraging more women to seek senior roles.

At Lloyds, 29 percent of senior roles are occupied by women, 22 percent at Barclays, while women account for 16 percent of senior executives at Royal Bank of Scotland. U.S. banks don't fare much better than their U.K. counterparts in the gender stakes. Women occupy 25 percent of leadership roles at J.P. Morgan Chase , 23 percent at Citi and 21 percent at Goldman Sachs .

*Bureaucrats' bonuses in the **Australian** state of **Victoria** are set for a shake-up, with Premier Daniel Andrews determined to curb the number of government executives receiving lucrative rewards even when performance in services declines. One year after coming to office, Mr Andrews has flagged a sweeping review of merit-based pay in government departments, telling senior executives across the bureaucracy: *"I'd like to think that you only get performance pay if you perform."* The comments come after *The Sunday Age* revealed that dozens of executives in the education department secured generous bonuses last financial year, despite a drop in the number of students who are completing year 12, meeting minimum learning standards, or taking part in vocational training. Asked if there was a need to review the bonus system across state departments, Mr Andrews replied: "There is, absolutely. I'm very keen to see some change in this area," he said. "We are now into the first full financial year under this government, and I think you will see a decided shift when it comes to performance pay." The issue of merit-based pay in Australia has long been contentious, with unions and other critics arguing that it singles out individuals for financial rewards even when success is the result of much broader teamwork. However, government executive bonuses are particularly sensitive because some believe such rewards are treated almost as an automatic salary top-up, with little accountability over how they are issued.

Bonus and performance correlation improves

The link between bonuses paid and company performance has improved significantly as a result of the new reporting and governance regime which came into force in 2013, according to research by Centre member **PwC.** The correlation between pay and performance began to increase after the government published its final proposals for better pay disclosure in 2012, and strengthened further once the requirements were in force, according to PwC's report on its findings. The link was more than twice as strong for those companies making the most transparent disclosures, according to the professional services firm.

Share plans and remuneration expert Suzannah Crookes of Centre member **Pinsent Masons** said that PwC's report suggested the new regime had had an impact: "From a political perspective, that will be a relief for companies and investors given the social and media sensitivities around high executive pay and the general wish of business to limit new regulation," she said. "The improved alignment of pay with performance also indicates that institutional investors have made effective use of the 2013 reforms."

PwC used the annual reports of FTSE 100 companies to compare performance with bonus 'outcomes', meaning the percentage of maximum bonus that was actually paid. The analysis assumed that companies outperforming market expectations would pay higher bonuses than those that were under performing. Companies have been required to include more information about how directors have been and will be paid, along with how this relates to company performance, as part of their annual reports since October 2013. This information can then be used by company shareholders when exercising their legally-binding vote on the company's executive pay policy, at least once every three years, as well as informing their annual advisory vote on implementation of the policy.

According to PwC, 36 percent of FTSE 100 companies fully disclosed threshold, target and maximum performance requirements in line with the fullest extent encouraged by the regulations for the 2014 financial year. A further 24 percent disclosed the level of performance required to generate an 'on target' bonus but not the full range of performance targets, 12 percent made some indication of where performance had been against the targets while the remaining 28 percent made limited disclosure or opted out on the basis of commercial sensitivity, according to its report.

The researchers found that the link between pay and performance was stronger the more transparent the company was with its disclosures. The correlation was more than twice as strong at those companies that complied with the requirements than at those that opted out, according to the formula.

"The report may prompt companies to revisit their approach where they have, to date, limited the disclosure of their executive bonus and long-term incentive performance measures and targets, perhaps by over-reliance on the exemption allowing delayed or reduced disclosure where commercial sensitivity is a concern," said share plans expert **Lynette Jacobs** of Pinsent Masons. "The report's finding of better alignment of pay and performance in the most transparent companies will encourage investors to press harder for more disclosure – already a key concern for investors. Stronger pay and performance alignment and greater transparency have been recurring themes in UK corporate governance recently.

Canada

The newly elected Liberal government indicated in its election campaign that it intends to increase taxes on employee stock option benefits by limiting Canadian resident employees from claiming the stock option deduction (*i.e.* the capital gains equivalent taxation) regarding option benefits above $100,000 annually. The government estimated that the stock option deduction cost the Canadian government $750m in 2014.

"However, this fails to account for the fact that employers generally forgo a tax deduction where employees are entitled to the stock option deduction. It is hoped that the new government will carefully re-evaluate the proposal having regard to the overall impact of implementing any limitation to the stock option deduction, and that it will also consider the significant value it provides employers in incentivizing their Canadian employees," said lawyers *Davies Ward Phillips & Vineburg*. "However, in the meantime, we are in a period of significant uncertainty because it is unclear what changes, if any, the government will enact and, if the government proceeds with implementing a limitation on the stock option deduction, whether there will be any grandfathering for existing options."

Upon exercising a stock option to acquire a share, a Canadian resident employee has an employment benefit equal to the difference between the fair market value of the share and the option exercise price. (In the case of a stock option issued by a Canadian-controlled private corporation, the taxation of the employment benefit is deferred until the underlying share is sold.) Where the stock option is cashed out, the employment benefit is equal to the cash payment received. Where certain conditions are satisfied, the Canadian employee is entitled to deduct one-half[1] of the employment benefit (*i.e.* the stock option deduction) in computing his or her taxable income so that the employee is taxed on an equivalent basis to capital gains. Stock options issued to Canadian resident employees are typically structured to meet the conditions that entitle employees to the stock option deduction.

Canadian employers are not entitled to a deduction for tax purposes in respect of the shares issued on the exercise of stock options. In addition, as a result of amendments in 2010, employees are only entitled to the stock option deduction on the cash-out of stock options where the employer files an election stating it will not deduct such payment for tax purposes.

Currently, employees generally have an incentive to defer exercising their vested options so that they do not trigger the employment benefit until there is an intention to sell the underlying shares and, in the case of an employer that is not a Canadian-controlled private corporation, an obligation to pay the tax in respect of such benefit. Moreover, where an employee does not intend to immediately dispose of the shares, the employee will have a capital loss if the shares subsequently devalue and the capital loss cannot be used to offset the employment benefit that was triggered on the exercise of the options.

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