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it's our business

newspad of the Employee Share Ownership Centre

A new era for approved employee share schemes

The Coalition government has given the green light to substantial simplification and reform of all four approved share ownership schemes during the course of the next 15 months.

This follows the exhaustive review of the approved schemes by the Office of Tax Simplification, which concluded that major changes had to be made quickly to head off strangulation of the Eso sector by over-regulation and excessive bureaucracy.

The significant changes include: alignment of the definition of retirement as a good leaver circumstance across all approved plans; harmonisation of the other good leaver provisions across all approved plans; permitting tax-free exercise of approved Company Share Option Plan (CSOP)/Sharesave options or removal of Share Incentive Plan (SIP) shares early in the event of certain cash takeovers and the removal of prohibitions on shares with restrictions being used in approved share plans.

In the SME sector, certain companies will be able to grant Enterprise Management Incentive share options at an effective tax rate of only ten percent, through the extension of Entrepreneurs Relief from full tax liability – *see inside for further detail*.

In addition, the Government has confirmed that the current HMRC approvals process for CSOP, Sharesave and SIP will be replaced by a self-certification regime, which is expected to begin next year. HMRC is expected to release more details on the proposed self-certification regime at Budget 2013 on March 20.

The majority of the changes will come into effect after Royal Assent to the Finance Act 2013, which is expected to be in July. In most cases, the draft legislation provides that in the case of plans already approved before Royal Assent, the rules of the plan will be regarded as having been amended so as to include the new provisions, said Centre member **Clifford Chance**. However, many companies will want to amend their existing plans for future ease of reference. In addition, employee documentation will need to be amended to reflect the changes.

The hope is that all these changes will encourage companies and their advisers to consider whether to implement more UK-approved share plans, or install them for the first time in the business. Approved plans are often considerably cheaper than other share plan arrangements since gains made by employees are normally free of income tax and National Insurance Contributions and instead are only subject to CGT at lower rates.

"The package of changes is great news for companies operating CSOP, SIP and SAYE plans," said Centre member **Linklaters.** "They will become simpler to administer and more harmonised. In addition, the Government has confirmed that CSOPs will remain in their current form, since businesses have responded to the OTS consultation (which queried whether CSOP should be abolished) saying that they are useful and relevant."

Draft legislation for those of the proposed changes which are due to take effect in 2013 has been published, and some changes in HMRC published guidance have been made, write partners *Judith Greaves* and *Matthew Findley*, at Centre member **Pinsent Masons**.

The draft legislation, which forms part of Finance Bill 2013, remains open for consultation until February 6 and there may be some amendments made prior to enactment. However, the removal of the reinvestment limit for dividends on SIP shares will take effect from April 6 this year.

From the Chairman

Former CentreWest bus chief Sir Peter Hendy CBE was knighted in the new year's honours. The Centre played a part in encouraging the Paddington-based bus workers to vote in favour of demunicipalisation and employee ownership. From there Sir Peter climbed the private then public sector ladder until he became chief of Transport for London whose internationally acclaimed Olympic triumph secured his elevation.

Malcolm Hurlston

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The changes in detail

SIP: dividends – with effect from April 6 2013, the present cap of £1,500 per employee per year on dividend reinvestment will be removed, as will the requirement that reinvestment must take place within three years. Companies will not need to amend their rules to achieve this change, but employee booklets and other communications will require updating. In addition, companies and/or their share plans administrators will no longer have to maintain systems for paying cash dividends in excess of the reinvestment limit. This will be a welcome change for companies and participants in SIPs, in particular where significant holdings have been built up, or where higher levels of dividends are paid, said Pinsent Masons.

The remainder of the changes will take effect from Royal Assent to the Finance Bill.

Retirement – if CSOP or SAYE options are exercised, or shares are withdrawn from a SIP, early by reason of retirement, currently the provisions allowing for tax benefits under the plans to be available are linked to a specified age, which is different in each of the plans, so causing complexity and inconsistencies. HMRC has accepted the OTS recommendation for simplification, by removing the concept of a specified age in each plan. This change mirrors the impact of the removal of the statutory default retirement age, and will be automatically read into the plan rules within effect from Royal Assent. HMRC guidance explains that going forward, companies will be required to operate the provisions for tax-favoured early exercise by reference to their own definition of retirement, which should be given its normal and natural meaning. It is unclear whether specific provisions allowing early exercise on retirement should continue to be included in the plan rules, but simply omitting the references to a 'specified age.' Some companies may already be familiar with having to address the question of whether someone has retired for the purposes of being treated as a good leaver for an unapproved share plan. In the context of HMRC's current administrative solution to interpretation of existing SAYE rules, companies may have had to consider whether an individual has retired in accordance with the contract of employment.

Good leaver circumstances – currently, CSOP, SAYE and SIP contain different provisions as to when an individual will be treated as a good leaver, for the purposes of being entitled to favourable tax treatment under those plans. In addition to the changes proposed in relation to retirement, HMRC has accepted the OTS recommendation that these provisions be aligned in the three types of plan, and the proposal is that the good leaver circumstances which currently apply to SIP will in future apply for CSOP and SAYE too. The current SIP good leaver circumstances are injury, disability, redundancy, retirement, TUPE transfer and sale of the employer company out of the group. The changes in tax treatment will apply where the plan rules permit exercise of options in such circumstances. This welcome simplification will assist both in operating plans (in particular where companies are operating more than one type of tax-advantaged plan), and in relation to process on corporate transactions and due diligence.

Cash takeovers – Currently, the tax advantages of CSOP, SIP and SAYE are not available to participants in the event of a cash takeover of the company prior to the normal time at which tax-favoured treatment can be obtained. Going forward, this will change under the proposed legislation, so that the tax-advantages of the three types of plan will be protected in the case of early exercise/withdrawal for CSOP/SAYE/SIP on the occurrence of a cash takeover. The legislation refers to a cash takeover pursuant a general offer – it is not clear what the position would be in respect of a scheme of arrangement where there is no general offer. Care will be needed as the tax protection may not be available where the consideration for the takeover is a mixture of cash and other assets (such as shares (where a roll-over of options may be available in the right circumstances) or loan notes). Also, there may be no tax protection for awards made at a time when "arrangements" for a takeover are in existence – it is not clear how this may impact regular contributions under a SIP or SAYE in the run-up to a takeover, added Pinsent Masons.

Material interests – all four types of tax-advantaged plan contain rules so that individuals who already have a material interest in the issuing company are not able to participate in the plans. The proposed changes in legislation will align the definition of a 'material interest' across the two discretionary plans, by amending the 25 percent, which currently applies for CSOP, to 30 percent, which is the relevant threshold for EMI, and removing the test altogether for the two all-employee plans SAYE and SIP. This change will take place automatically for companies with effect from Royal Assent and will be of particular benefit to some close companies that have previously been restricted in their ability to offer tax-advantaged share incentives to key individuals.

Restrictions on shares – if shares carry restrictions, current rules provide that SAYE and CSOP options can only be granted where these are permitted restrictions, which are quite narrow in scope. Similar provisions apply in relation to SIP shares, although the detail of the permitted restrictions is different. However, EMI options can be granted over restricted shares, provided that the option agreement contains details of the restrictions. The current position means that some private companies in particular are not able to offer CSOP/SAYE/SIP and, where the company does not qualify for EMI, this can mean that there is no possibility of offering tax-advantaged incentives. The proposed amendments will mean that, as from Royal Assent, all tax-advantaged plans will be able to use restricted shares. As is currently the case for EMI options, in assessing relevant financial limits under the plans, the restricted shares will be valued as if unrestricted. It will be necessary, however, to provide details of the restrictions. This will enable many more unlisted companies to qualify, but may not help companies which have more than one class of share or if are private-equity owned, because of other conditions in the legislation. A consequential effect may be that in future, SIP shares could be subject to forfeiture provisions even in good leaver circumstances (which is not currently permitted by the legislation).

SIP: accumulation periods – some companies offering the partnership shares under a SIP may operate an accumulation period (whereby a participant's monthly deductions are accumulated over a period of, say, three months and the shares purchased at the end of that period rather than on a monthly basis). Companies are exposed to share price movements over an accumulation period, as the legislation requires that the participant acquires partnership shares at the lower, either of the price at the beginning of the period or the price at the end. In some cases, companies have chosen not to operate accumulation periods because of this exposure. The proposed changes will mean that, for new partnership share agreements entered into after Royal Assent, companies will have more flexibility on the approach in these circumstances, which will potentially give them the ability to budget with greater certainty in relation to acquisition of partnership shares. The company will have to choose, and state in the partnership share agreement whether the partnership shares will be acquired at the price at the beginning of the accumulation period, or the price at the end, or alternatively, to continue the current arrangement. Some companies may want to reconsider whether an accumulation period on this basis would be more attractive.

EMI: disqualifying events – where there is a disqualifying event for EMI purposes, participants will lose any tax benefits in relation to growth in value of the shares after the date of the disqualifying event, except where options are exercised within a specified period following the event. That period is to be extended from 40 to 90 days. This will make it easier for participants to take advantage of this window for tax-favoured exercise in relevant circumstances.

Changes made or to be made other than by legislation

As well as the changes to be made by amendments to the legislation, some changes are being made by way of revised HMRC guidance.

Electronic communications – where information is required to be provided to participants, HMRC has confirmed that this can be provided in electronic format, provided that it is appropriate to do so, taking into account whether participants will have access to a PC/intranet portal etc. This clarifies and confirms the approach which companies have increasingly been taking in relation to the administration of share plans.

EMI: incorporation by reference – where documents are incorporated by reference into an EMI option contract, HMRC has confirmed that these do not need to be appended to the contract, provided that the contract contains a statement of where they can be accessed.

SAYE: monthly contributions – the circumstances in which SAYE contributions can be made otherwise than from salary are extended to include cases in which an employee is on sabbatical leave or secondment. This welcome change reflects recent trends in more flexible working practices.

Our thanks to Judith and Matthew at Pinsent Masons for the detailed points above.

The Government has clarified that the **seven-year SAYE** contract is being abolished by changing the SAYE prospectus, although take up of such contracts has been very small in recent years.

Centre member practitioners, including Clifford Chance and Linklaters have devised calendar charts and tables to guide their clients through the impending Approved Eso Plan changes:
http://tinyurl.com/cauef4m "Most changes are automatic so will not require a rule amendment. However, we recommend that rules are updated to avoid confusion and mistakes when operating plans," added Linklaters.

Pett, Franklin & Co. LLP explained to clients the reasons why companies should now look again at establishing an HMRC-approved 'Share Incentive Plan' for the benefit of UK employees. For more details: http://tinyurl.com/bx6xtbz

The **Centre Awards 2013** finalists will be announced by chairman Malcolm Hurlston CBE at the Centre's 25th annual conference at Le Meridien Hotel in central Barcelona (see below) on **Thursday June 6 and Friday June 7.** Entry forms for the *'Best Employee Share Ownership Plan of the Year Award,'*- divided into three separate categories, namely large and smaller companies and best plan communications – can be downloaded by members from the Centre website. The possibility of further categories (by profession) will be discussed at the international committee meeting in Davos.

Law Society urges scrapping of 'shares for rights' plan

Government proposals for new employee shareholder contracts are flawed and will lead to more red tape, rather than less, the **Law Society** warned. It demanded the deletion of Chancellor George Osborne's plan to implement a new employee shareholder status, contained within Clause 27 of the Growth and Infrastructure Bill, which is before the House of Lords.

The Treasury said the aim of the new status is to boost employee engagement and productivity and to remove perceived barriers, such as the fear of being taken to employment tribunal, which it says is deterring businesses from hiring.

The Finance Bill 2013 will include new relief for shares subscribed by an employee on or after April 6, 2013 if he or she agrees to adopt the proposed new employee shareholder status and lose some employment law protection, such as certain rights to claim unfair dismissal. The first £2,000 worth of shares is expected to be free of income tax and NICs, and there will be a full CGT exemption for up to £50,000 worth of shares.

Centre member **Pett, Franklin & Co. LLP** was lukewarm about the scheme: "As the proposal stands, it has a number of serious shortcomings – particularly for smaller companies - and is likely to be the focus of much imaginative planning to allow senior executives to access an exemption from CGT with no effective of loss of meaningful employment rights," said the Birmingham based employee share experts. "It should be noted that, as framed, the value of the shares issued will be subject to income tax in the normal way – although this is understood to be under review. It is now intended that the Secretary of State may, by regulations, impose restrictions upon the terms of any sale-back of employee shareholder shares upon the holder leaving the company or group. We understand that, this proposal, although first intended to take effect in April, is subject to further debate and possible change."

However, the Law Society is concerned that small businesses, who are the prime target audience for this proposal, will be put off by the complex tax, company law requirements and extra costs.

Law Society president Lucy Scott-Moncrieff said in a letter to fellow Lords: "The new status will cause substantial confusion for employers at the beginning, but particularly on the termination of an employee's contract. There is potential for costly litigation on a range of complex issues which are likely to arise when an employee leaves, which runs counter to the government's stated aim of supporting small and medium sized enterprises through simpler regulation. The decision to restrict employee shareholders access to maternity rights and flexible working also conflicts with the Government's commitment to family friendly policies. The proposals are likely to have a discriminatory impact as employers may not be aware of the interaction between the rights being sacrificed and those rights governed by domestic legislation, which still apply to them. Employers would have to take this into consideration in order to avoid allegations of indirect sex discrimination." She added: "The government has not undertaken an adequate assessment of the proposal's likely costs and consequences. The restricted period of consultation on this proposal has prevented constructive engagement with stakeholders. It is unrealistic to provide interested parties with only three weeks within which to respond to a consultation on what are complex issues covering a number of areas of law."

ER boost to EMI

The attractiveness of EMI options has been improved, writes **Catherine Gannon** managing partner of Centre member employment lawyer Gannons. Now an employee needs only to have held an EMI option for one year prior to sale in order to benefit from the very low rate of Entrepreneurs' Relief (ER) on capital gains – coming in at ten percent, rather than the usual 18 or 28 percent. "This is great news for anyone holding an exit only EMI option and great news for employers, who no longer need to think about issuing options that are exercisable prior to exit in order to give employees access to entrepreneurs' tax relief," said Catherine. "The existing rule enabling employers to claim Corporation Tax on the amount of gain made by the employees on exercise is still intact – an overlooked but generous corporation tax saving"

When EMI shares are sold, Capital Gains Tax (CGT) will be due on the gain. This CGT has normally been at 28 percent, as such shareholders rarely satisfied the conditions for ER, which reduces CGT to just ten percent. However, the Autumn Statement confirmed that for shares acquired under EMI, the ER conditions will be relaxed. It will no longer be necessary for the individual to own at least five percent of the company's shares and the one-year qualifying ownership period will run from grant of the options instead of from exercise. This extends ER to shares sold immediately after exercise; a common scenario. The changes apply to shares acquired from April 6 2012 under a qualifying EMI option sold from April 6 2013. "This is good news, as it potentially reduces the CGT bill on such shares from 28 percent back to ten percent (as it was until 2008 under the old taper relief regime); so EMI is back to its best," added Catherine.

Unapproved share schemes: reform bid

The Office of Tax Simplification (OTS) made six main recommendations in its review of unapproved employee share plans, in order to make them easier and less bureaucratic to use as executive incentives.

- When employees receive employment-related shares, they should only pay income tax simultaneously if the shares are capable of being sold at that time. If not, the employee should have the choice to be taxed at acquisition or to defer the tax charge until the shares become marketable.

- The rules surrounding share awards to internationally mobile employees should be simplified and should align the tax treatment of internationally mobile employees with tax on other general earnings
- A new employee shareholding vehicle is needed to replace the employee benefit trust (EBT) which, claimed the OTS, had acquired connotations of tax-avoidance. Provided safeguards were put in place (e.g., the vehicle should be UK resident and exist simply to acquire and hold shares for employees past and present), it would be exempt from a raft of tax legislation that causes problems for legitimate EBTs
- There should be online filing of Form 42 by 2014.
- The deadline for employers to report income from employment-related securities should be extended to 60 days following the end of the tax month in which the income arises. There should be no benefit in kind charge where PAYE on employment-related securities is made good to the employer
- Practical steps should be taken to make the share valuation process easier, especially for private companies.

The Government confirmed that it will publish its initial response to the OTS recommendations in the 2013 Budget on March 20, although any changes seem unlikely to take effect before 2014, said Centre member **Clifford Chance.**

The OTS sees such share schemes as an important business tool in rewarding employees and retaining staff and is keen to see the system simplified to encourage more widespread use. Its recommendations follow a year-long consultation with employers, professional advisers and representative bodies.

Share plans expert Matthew Findley of Centre member law firm **Pinsent Masons**, called on the Government to show that it was "genuinely committed" to increase employee share ownership, as indicated by recent announcements. "Some of the changes, if implemented, would represent a significant change in the current tax regime, and it remains to be seen if the Government has the appetite for this," he said. "There is a concern that any half measures by small amendments to existing rules would end up in further complexity rather than simplification."

In an interim report, published last year, the OTS said that technical difficulties and administrative burdens often discouraged businesses from using share ownership as a form of staff incentive; despite the advantages they brought in aligning employee reward with business performance and encouraging staff retention. "The current share scheme tax legislation is a tangle of complexity," OTS director **John Whiting** said. "It creates costs and pitfalls for companies and employees, and significant burdens for HM Revenue and Customs. We have spent a lot of time talking to the people that use the schemes, and found that while employers saw real benefits of offering share-based rewards, they had difficulties with managing the schemes within the tax rules. At the same time we have been very mindful of avoidance risks in this area. We think we have a balanced package of recommendations that will simplify processes, increase fairness and encourage employers to offer these ownership options without creating new avoidance opportunities," added Mr Whiting.

Say on pay

Centre member **Linklaters** reminds readers that legislation on enhanced shareholder voting rights and new directors' remuneration disclosure rules *Say on Pay* is to be finalised by April this year. It will apply to financial years ending on or after October 2013. Shareholders will have a binding vote on remuneration policy at least once every three years, and there will be increased disclosure for the advisory vote on pay, including a single figure for total remuneration received by each director during the reporting year. This will relate to the actual figure earned rather than potential pay awarded. Under the reforms, directors' remuneration will be disclosed in a 'forward-looking' policy report and a 'backward-looking' implementation report. Some companies are already considering how the new regime will affect their 2012 disclosures, in order to help them prepare for 2013.

Significant progress has been made to replace the FSA with new regulators, including the Prudential Regulatory Authority and Financial Conduct Authority. The Financial Services Act, which will bring the core reforms into effect, received Royal Assent on December 19. Legal transition to the new regime will take place on April 1 this year, added Linklaters.

Real time information.

Many employees will be required by HMRC to operate the new real time information (RTI) reporting regime from April this year (and all employers will be required to operate RTI from October 2013) warned **Clifford Chance**. Under RTI, the general rule is that employers must report payments to HMRC on or before the time the payment is made. Companies will at least need to send an information return to HMRC on (or before) every payroll date (usually every month, but possibly weekly or fortnightly for some companies). RTI extends to employee share plans, although in some cases special rules will apply allowing employers more time to report. Inaccurate RTI returns will be subject to penalties from the next financial year on, starting April 6, 2013.

Last act for final salary pensions

Private sector final salary pensions are closing to new entrants at the fastest rate since 2005, according to the **National Association of Pension Funds**. Its annual survey, which covered 1,018 schemes run by 280 firms, found that only 13 percent were open to new joiners in 2012, down from 19 percent in 2011. Meanwhile 31 percent are even closed to current staff, up from 23 percent the previous year. The NAPF said it believed higher liabilities created by quantitative easing and low gilt yields have prompted a barrage of fresh closures.

NAPF ceo Joanne Segars said those starting a new job in the private sector would have "Next to no chance" of getting a final salary pension.The pressures on final salary pensions have proven too great for many businesses. The growing liabilities fuelled by quantitative easing will have been a factor behind the record rise in closures," she added. The survey show around half of those employers who still offer final salary pensions were planning to close them in favour of defined contribution schemes. However, more than two million employees still contribute to final salary schemes and these help pay the pensions of four million former employees.

Liverpool-based **People Can** – which had 250 staff and volunteers – went into liquidation after its pension deficit widened to £17m from just £11m earlier this year. But experts warned that it could be the first of many in the not-for-profit sector to face closure due to pension legacy issues.

Returning member

The Centre is pleased to welcome lawyers **Macfarlanes** back into membership. **Robert Collard** is the Centre's contact. His co-ordinates are: Robert Collard, Partner, Macfarlanes LLP, 20 Cursitor Street, London EC4A 1LT

email: robert.collard@macfarlanes.com.

Robert specialises in employee share schemes and incentives. He advises both listed and unlisted companies, trustees and senior executives on the design, implementation and operation of approved and unapproved schemes and all other aspects of employee share ownership. He also deals with the share schemes aspects of M&A transactions, heading up a team with taxation and regulatory capabilities, including expertise on the FSA Remuneration Code. Much of his team's work is international and he has close relationships with leading independent law firms in a variety of jurisdictions. Recent highlights include:

- Advising Celerant Consulting, a company with numerous employee shareholders across multiple jurisdictions, on its sale to Hitachi Consulting;
- Assisting Lonrho plc and Record plc to implement all-employee share schemes;
- Advising Hogg Robinson Group plc on the operation of the employee share schemes Macfarlanes established for them at the time of their flotation, including an international SAYE scheme operating in over 20 jurisdictions;
- Advising on the operation and implementation of a number of incentive schemes for companies within the Virgin group, including Virgin Money.

On the move

Accurate Equity announced two further additions to its team - to support its growth in the UK & Benelux markets. They are: **Sara Cass**, Senior Adviser; and **Mayura Arankalle**, Adviser. Further UK appointments will be announced in due course. Stuart Bailey, md of Accurate Equity's UK & Benelux Office, said: *"I am delighted to welcome both Sara and Mayura to the Accurate Equity team. Between them, they bring a wealth of experience in share plan administration and accounting within a wide range of organisations."*

Sara is a qualified accountant with seven years of experience in employee share plans. She worked for BP where she specialised in share plan administration and accounting and reporting for share-based payments. **Mayura** joins Accurate Equity from ESOP Direct and has six years of experience in equity compensation. Having worked with a wide range of listed and unlisted clientele, she has extensive experience in design, valuation, accounting and implementing all kinds of compensation plans. Mayura is a chartered accountant, with a Masters degree in commerce.

Senior civil servant **Jane Bateman** is leaving the Department for Business, Innovation and Skills next month, newspad is sorry to report. Centre chairman Malcolm Hurlston CBE said: "News of Jane's impending departure from the BIS ministry is a great blow to the employee share ownership movement, as she brought direction, pace and innovation to the work of the Coalition government in our long neglected sector. She was the first mandarin to visit and speak at a joint Centre - STEP conference in the Channel Islands, for which we are very grateful. We wish her well in the next stage of her career."

COMPANIES

The Employee Bonus Share Scheme at **SportsDirect** continues to aid staff retention and motivation, said the company, with the first vesting of the 2009 Scheme rewarding 1,750 employees in August 2012. The second vesting is due in August 2013. If all four stretch EBITDA targets through to FY 2015 are met, assuming no employee departures, the 2011 scheme will reward c.3,000 employees. Sports Direct said: "We have already met the FY 2012 target and are confident of achieving the same in FY 2013."

The Pennsylvania Lottery has come under fire in the UK where it operates the National Lottery over $8m it set aside to pay bonuses to company executives. Word of the bonuses comes on the heels of **Camelot Global Services** doubling the price of lottery tickets, which sparked lottery players to call for a boycott of the UK lottery.

CONFERENCES

Jersey: April 19

This year's Centre annual seminar for trustees, held in association with the Society of Trust & Estate Practitioners (STEP) Jersey, will take place on the morning of **Friday April 19** at the Royal Yacht Hotel. Topics tailored towards an audience of trustees administrators and trust lawyers will be covered by expert speakers, including: **Malcolm Hurlston** CBE, chairman of the ESOP Centre; **Helen Hatton**, Sator Consulting, who developed Jersey's regulatory regime; **William Franklin**, Pett, Franklin & Co. LLP and **Rosemary Marr**, STEP Jersey & Nedbank. Attendance prices are £295 for Centre members and £425 for non-members. There is room on the agenda for a couple of speakers who will enjoy a special package. Send your proposed slot title along with three headline bullet points to Centre UK director David Poole at: dpoole@esopcentre.com. Register for this event now.

Barcelona: June 6 & 7

Eight speaker slots have been confirmed 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.** The Centre has received an exceptional number of enquiries about this event, both from service providers and plan issuers, including as yet non-member companies.

Speaker slot holders to date are: **Arne Peder Blix** of Accurate Equity; **Patrick Neave,** of the Association of British Insurers, who will discuss its beefed up executive compensation code; **David Craddock** of David Craddock Consultancy Services, who will answer the key question – Does Esop work commercially? **John Daughtrey** of Equiniti, who, together with a colleague, will deliver a client case study; **Mike Pewton** of GlobalSharePlans; a plan case study from **MM & K; Joe Saburn** of Ogletree Deakins, one of the biggest US employment law firms and **William Franklin** of Eso law firm, Pett, Franklin & Co. Ltd. In addition, Centre international director **Fred Hackworth** will moderate a delegates' open debate. The preliminary programme can be reviewed on the Centre website at **www.esopcentre.com** , but there are some slots still to fill. Would-be speakers at this major European event should contact Fred asap email: **fhackworth@esopcentre.com** with copy to **esop@esopcentre.com** Confirmed speakers qualify for a substantial reduction (from £995 to £860 with no VAT) in the Centre's two nights half-board accommodation + conference package attendance fee.

Boost to LLPs in Jersey

Although legislation was introduced in Jersey 15 years ago to enable the registration of Jersey limited liability partnerships (LLPs), none have been registered to date, writes Centre member **Bedell Cristin**. The main reason for this has been owing to the statutory requirement for an LLP to maintain a bond or similar financial provision of at least £5m, in order to provide creditor protection on the winding up of the LLP. From January 17 this year however, an LLP was no longer required to maintain such a bond. Instead, the law simply prohibits the withdrawal by any partner of property of the LLP, unless it gives a prescribed form of solvency statement within a 12-month period before any such withdrawal. An LLP has separate legal personality as distinct from its partners and is not a body corporate. It must have at least two partners who (a) intend to carry on business with a view to profit, (b) contribute their effort and skill to that business as agent for the LLP and not for the other partners and (c) agree to share the profits of and interests in the property of the LLP between themselves. An LLP is managed by its partners in accordance with its partnership agreement and at least one partner must act as a 'designated partner' who has to carry out statutory administrative and filing duties such as, notifying the registrar of LLPs of any change in the names and addresses of the partners (including by way of an annual declaration). An LLP is now treated as a tax transparent vehicle and its non-Jersey resident partners are not subject to income tax on gains or profits deriving from their international activities as a partner of the LLP. A partner (or former partner) in a Jersey LLP has limited liability and is not liable for LLP's debts or liabilities, except in certain circumstances where property of the LLP is withdrawn by that partner. Further, the LLP is able to claw back any property of the LLP withdrawn by a partner, in certain circumstances. An LLP now presents an attractive option for businesses structured as ordinary partnerships as well as offering an alternative vehicle for use in global investment and holding structures. The LLP complements the existing range of investment vehicles available in Jersey and ensures that Jersey remains competitive within the international market place in meeting investor expectation. Bedell Cristin together with its associated company, Bedell Trust Company Ltd, provides assistance in the registration of Jersey LLPs, their ongoing administration and the conversion of existing partnerships to LLPs.

FATCA: Banks will snoop for the US Treasury

Clients of British and Irish banks, and other financial institutions, could face increased charges after the UK and Irish governments have signed controversial inter-governmental agreements (IGAs) with the US to report directly to America's tax authority, the Internal

Revenue Service (IRS), warned the independent financial advisory group *de Vere*.

The UK and Ireland are amongst the countries to have already accepted an IGA with the US in order to be compliant with the Obama administration's Foreign Account Tax Compliance Act (FATCA), which will require all foreign financial institutions to declare the activities of all their American clients to the IRS.

Nigel Green, ceo of the de Vere, said: "The costs of becoming FATCA-compliant for banks, and other financial institutions, in countries where an IGA has been agreed will be astronomical. In these challenging economic times, when some banks have even had to be rescued from collapse using taxpayers' money, many financial institutions can ill-afford these costs and they will, in all probability, be passed on to their clients. Essentially, banks, and in turn their clients, will be paying for the privilege of becoming de facto snooping agents for the US Treasury. Moreover, under the IGAs, the British and Irish revenue services would assume responsibility for domestic administration of FATCA, shifting those costs from the IRS to UK and Irish taxpayers, respectively."

Mr Green added: "Last year Schroders, the asset management company, estimated that it will cost $500bn to implement FATCA globally and a further $10bn annually to operate it. *The cost to the UK's financial services industry alone is believed to be £400m, and some reports put the cost for some Swiss banking groups at CHF 150m.* The enormous financial burden put on financial institutions and their clients the world over, in an attempt [by the US government] to recover less than $1bn per year in lost taxes, is wholly unacceptable and is one of the many reasons why FATCA must be repealed."

His warning came days after the US authorities released the FATCA regime's final rules. Foreign financial institutions have until January 1 2014 to meet FATCA's requirements.

INTERNATIONAL

Centre member **Accurate Equity,** the leading provider of software and services related to equity compensation, has launched operations in Helsinki, **Finland.** It has secured its first Finnish client and appointed industry expert Anna Ainesjärvi as local md. In Helsinki, Arne Peder Blix, CEO of Accurate Equity, said: *"By launching our Finnish operations, we will be able to offer a new, flexible alternative in the Finnish market and service our clients locally. We recognise the importance of being able to tailor the software and service to meet each client's unique needs, particularly now as equity-based compensation is trending towards broader based plans and increased use of "pay-for-performance" mechanisms"* Other members of the Finnish team, as well as the office location, will be announced in due course.

France: Gains realised on the exercise of French qualified stock options and the acquisition of French qualified free shares will be treated as salaried income for awards granted, backdated to September 28, 2012, reported Centre member **Deloitte.** They will therefore be subject to progressive tax rates of up to 45 percent, in additional to CHR (Contribution on High Income) of 3-4 percent, if applicable. Furthermore, the beneficiary is liable for social surtaxes reduced from 15.5 percent to 8 percent (of which 5.1 percent will be deductible), and a social contribution of ten percent. The Constitutional Court, effectively, cancelled a proposed increase of the latter social contribution, which would then have gone up to between 17.5 -22.5 percent. All of the taxes will be levied on the beneficiary for the year of sale of the underlying shares. Awards granted before this date remain taxable at the existing flat rates (unless an election for taxation at progressive rates was made). The specific social tax regime applicable to qualified share incentive plans remains applicable such that these incentives are exempt from ordinary social charges. These charges can amount up to 50 percent for employers and about 23 percent for employees (they are lower above certain caps). However, such awards are subject to the special social tax at grant due by the company (recently increased to 30 percent). The strict reading of the new code articles leads us to conclude that the exemption is maintained for stock options even where the holding period is not respected. Start-up stock options (BSPCE) continue to benefit from a full exemption from social security charges and the imposition of a flat tax at a rate of 19 percent, plus the 15.5 percent social surtaxes (34.5 percent) on the date the shares are sold. They are also subject to CHR, if applicable.

Although not the subject of the new tax bill, a regulation issued after the first trust filing deadline this year, has clarified the new trust tax obligations with respect to **Employee Benefit Trusts**, added Deloitte. An exemption **may** apply where a trust is established by a company (or group of companies) for its own account such as the management of a company's employee share and savings plans.

The Oakland, California, based **National Center for Employee Ownership** invites Centre members to read founder Corey Rosen's latest article about employee share ownership outside the US - at: http://tinyurl.com/bgzhhfd. Senior staff officer Corey can be contacted at: crosen@nceo.org

Esop manipulation in Zimbabwe

Terms for the transfer of a 51 percent stake in Zimplats – the country's leading platinum miner - between the government of Zimbabwe and the mining house's South African parent firm, Impala Platinum Holdings, have been signed. Under the deal, Implats will sell ten percent of its shares in Zimplats to the community that lives near the mine through a share ownership trust, while another ten percent will be sold to current and future workers under an Employee

Share Ownership Trust. The remaining 31 percent will be sold to the National Indigenisation and Economic Empowerment Fund, which is run by the government. The shares are valued at $971m and Zimplats will facilitate the transaction by providing vendor financing at an interest rate of ten percent per annum. Youth Development, Indigenisation and Empowerment Minister Saviour Kasukuwere of President Robert Mugabe's ZANU-PF party, said that the deal marked a major breakthrough in Zimbabwe's quest for economic independence. "The deal signifies that the time has come for African resources to start benefiting ordinary people in the continent than a situation where they only benefited a few foreign elite," he said. "It shows that there can be accommodation of investors and ordinary people where investors share control of companies with locals. It allows ordinary people who are fighting poverty … to realise their dreams." Much criticism has been levelled against the empowerment drive, which seeks to ensure that locals have at least 51 percent ownership of any enterprise that is valued at $500,000 or more. Their major argument has been that no investor would want to put their money in a country where they do not enjoy majority shareholding. But Minister Kasukuwere dismissed this and warned these investors that empowerment is a reality of the 21st century. "We are not against foreign direct investment but we want equitable partnership in foreign companies that do business in Zimbabwe because we cannot allow a situation where communities do not benefit from businesses in their areas. This is the way to go. We have ample evidence that we can achieve equitable distribution of wealth." He claimed that at least $110m had been distributed to community share ownership trusts, while 800 companies have had their proposals to dispose of shares to their workers approved. In all $1bn worth of shares had been transferred from the companies to the 'community' so far, he added.

Bonus corner

A **Deutsche Bank** trader has lost more than £30m in bonuses after being fired for allegedly trying to manipulate interest rates. Christian Bittar, one of the bank's best-paid traders, has had the scheduled payout clawed back by his former employer. Deutsche Bank dismissed Mr Bittar in 2011 for allegedly colluding with a Barclays trader to fix benchmark interest rates in his favour in order to boost the value of his trades. The bank said the $53m (£34m) bonuses it has withheld were unvested compensation - earned by Mr Bittar in the years before 2011, but as yet unpaid.

Deutsche Bank is conducting an investigation into its employees' involvement in rigging benchmark interest rates. Mr Bittar's alleged attempts to manipulate Euribor, the eurozone's version of Libor, and similar alleged efforts by derivatives trader Guillaume Adolph over yen-dominated Libor are the focus of the probe. A spokesman for Deutsche Bank said: "Upon discovering that a limited number of employees acted inappropriately, we have sanctioned or dismissed employees, clawed back the unvested compensation of employees, and will continue to do so as we complete our investigation."

Royal Bank of Scotland is bracing itself for another row over pay for its banking staff following a difficult year. It is believed that RBS is planning to pay bonuses worth £250m – an average of £21,000 for each of its 11,900 staff in the division, although high-flyers will get far more. That would be well down on the £390m in bonuses it paid out for 2011 and £937m in 2010, but will still raise eyebrows in the wake of a series of scandals to hit the bank.

RBS is likely to be hit with a huge fine over its involvement in the Libor rate-rigging scandal. It has coughed up £175m following a computer meltdown last summer which caused havoc for millions of customers at its NatWest, RBS and Ulster Bank branches.

The bank, which is more than 80 percent owned by the taxpayer, is under pressure from Whitehall to claw back £4m in deferred shares owed to John Hourican, the head of the investment bank, who is rumoured to be leaving shortly.

RBS ceo, Stephen Hester, agreed to waive his bonus for 2012 in the wake of the IT glitch. He could have got £2.4m on top of his £1.2m salary but has now waived his bonus in three of the past four years since taking over at the bank after its £45bn bailout by the taxpayer.

Many FTSE 100 executives will not have any increase in their annual bonuses this year and some bonuses could even be cut up to a quarter, according to a survey published by Centre member **PwC.** The survey, which questioned heads of rewards, executive board members, remuneration committee chairmen and HR directors at 40 large UK companies, showed that fewer than ten percent of those companies are expecting material increases to bonus pay-outs as remuneration committees plan to exercise restraint at impending AGMs.

Almost half the respondents expect bonus pay-outs will be about the same as last year and 21 percent think they will be at least ten percent lower and 17 percent predict they will fall by more than a quarter. This means 2013 will be the second successive year of bonus reductions.

The survey found that salary will be static for FTSE100 executives. More than one third (38 percent) of respondents said they were planning to freeze salaries for executive directors in 2013 - a figure not seen since the height of the financial crisis in 2009, PwC said.

However, despite remuneration committees being keen to demonstrate restraint, the survey suggests that there is unlikely to be a large drop in executive pay levels in the UK over the longer term. Only 15 percent of respondents said they expected total executive pay levels to be ten percent lower in their organisation in three to five years time.

Tom Gosling, head of PwC's reward practice, said: "The calls from shareholders for pay and bonus restraint appear to have hit home. Following a number of years in which bonuses had crept up to around 80 percent of maximum pay on average; we expect them to fall back towards target levels of around 60 percent of pay this year. This will mark the second successive year of bonus reductions in the FTSE100. There is no doubt that the intense shareholder, public and political focus on executive pay over the last 18 months has caused a change of approach. But the level of impact is still only modest and anyone hoping for a large-scale reduction in executive pay and bonus payouts in the long-term is likely to be disappointed. We expect executive pay to plateau for a period, rather than fall dramatically. In all of the debate around executive pay, perhaps most worrying is the impact on the image of the UK as a place to do business. *Nearly two thirds of companies said the scrutiny on executive pay is making the UK an unattractive location for executives.* The UK benefits hugely from the flow of talent to our shores, bringing with it investment, jobs and tax revenues and care must be taken not to damage our competitive position."

The PwC report mirrors the findings of a recent **Towers Watson** survey of 150 countries throughout Europe, which showed that growth in executive pay this year is likely to be moderate. UK respondents said they expected the median increase in executive salary levels to be three percent this year, whilst most bonus payouts were likely to be under target. Centre member Towers Watson concluded in its top executive compensation survey that the median salary increase for FTSE 100 ceos was 2.6 percent in 2012 and between three and four percent for other FTSE 100 boardroom members and executive committee. Bonuses paid out in 2012 on 2011 performance were generally lower as a percentage of the maximum obtainable than what was paid out in 2011 on 2010 performance.

US banking giant **Goldman Sachs** abandoned plans to postpone the payment of deferred share awards from 2010 and 2011 until the beginning of the next tax year on April 6. Bankers could avoid paying the current 50 percent rate of tax on their share awards because from April 6, the top rate of income tax will fall from 50 percent to 45 percent. The 50 percent tax rate, introduced in 2010, applies to anyone earning more than £150,000 pa. A banker awarded a £100,000 bonus on top of a £150,000 salary would save £5,000 in tax if his or her bonus pay out was pushed back beyond April 6. Goldman declined to comment. Goldman had been considering postponing the payment of 2010 and 2011 share awards, but not 2012 awards. In the US however, Goldman did accelerate delivery of $85m in stock awards to senior managers, including ceo Lloyd Blankfein, to help them avoid higher tax rates that took effect this year. Having enjoyed a stronger 2012, Goldman bankers will do well when bonuses are handed out. Analysts expect the Wall Street bank to have amassed a total compensation pot, which includes bonuses and salaries, of between $13.3bn (£8.2bn) and $13.8bn for 2012. That is up from $12.2bn in 2011, when the bank suffered only its second quarterly loss since becoming a public company in 1999.

Network Rail executives will enjoy bonuses of up to £900,000 each next year as passengers struggle to cope with above inflation fare rises. Executives at the railway company are in line for a bumper year in which they could receive bonuses worth more than double their salaries. The bonuses are likely to see the take-home pay of three executives at Network Rail rise to more than £1m in 2014. Maria Eagle, the shadow transport secretary, said: "Commuters facing nine per cent fare rises will be outraged at the scale of the bonus packages being enjoyed by a few at the top of the rail industry. It will be unacceptable if payouts on this scale are made when performance remains deeply inadequate, with many passengers facing overcrowded services and too many delayed and cancelled trains." Last year, Network Rail bosses gave up their annual bonuses amid political pressure to restrain high pay outs at a time of public sector austerity. Manuel Cortes, leader of the TSSA rail union, said: "Hard pressed passengers will be furious at a time that they have just suffered their latest inflation plus hike in fares, Network Rail bosses are looking at vast bonuses at what is, in effect, a publicly funded monopoly. They seem to be running their own gravy train during what is meant to be an age of austerity."

Centre member David Pett, who is a former member of Network Rail, explained why the bonuses are due to be paid:

"These are payouts - for awards in respect of Control Period 4 (2009-2014) - under the L-TIP part of the bonus plan which NR, as a requirement of its licence, must have in place! This is why the then Secretary of State Justine Greening's criticism of the existence of such a plan was so absurd.

"If politicians do not like the idea of performance-related bonuses, they should have removed the licence requirement to have them!" added Mr Pett, partner at Pett, Franklin & Co. LLP.

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