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it's our business

newspad of the Employee Share Ownership Centre

Centre lobbying pays off as Govt raises plan investment limits

Years of intense lobbying by the Centre finally paid off when Chancellor of the Exchequer George Osborne announced big increases in the monthly and annual employee investment limits in the two major tax-approved employee share schemes.

From the start of the new tax year on April 6, there will be increases in the individual employee investment limits for both HMRC approved SAYE-Sharesave plans and Share Incentive Plans (SIPs).

- The SAYE monthly limit on the amount that employees can save and apply towards the purchase of shares will double from £250 to £500 per month.
- The limit on free shares that can be awarded under a SIP will increase from £3,000 to £3,600 per year and the limit on Partnership Shares employees can buy will be increased from £1,500 to £1,800 per year - or ten percent of an employee's annual salary.
- Matching Shares are linked to the number of Partnership Shares (with a maximum 2:1 ratio). That ratio is not changing but the increase in the limit on Partnership Shares will increase the maximum value of Matching Shares correspondingly.

It was the first increase in the SAYE savings limit for 22 years, during which time the inflation adjusted value of the old £250 monthly limit has been more than halved. The SIP yearly investment limit had never been raised during its 13 years of existence to date.

Several long-standing Centre members wrote in to express gratitude for the Centre's continuing and ultimately successful efforts to get the limits raised. For years on end, the Centre has told successive governments repeatedly that the old investment limits were being reached all too easily, particularly in the financial services and hi-tech sectors, where in some companies more than a third of eligible employees were frustrated because they were not allowed to invest more in their employer's SAYE scheme. About one quarter of SAYE participants in client companies have already reached the old savings investment limit, according to **YBS Share Plans**.

From the Chairman

Look out for the news on January 9/10 when we shall be launching the new annual Esop index which has been FTSE calculated by Capital Strategies. Based on companies with more than three percent employee ownership it will give us for the first time a reliably broad measure of esop outperformance - and the academics can bin their sliderules. There will be quarterly updates and we hope it will influence investors as well as policymakers.

While members activate the Chancellor's good news, detailed in our lead story, the Centre team is working on its most ambitious event programme: Davos, Jersey and New York (all in the first quarter). On the launchpad too is the Institute's 2014 Certificate in Eso Studies with the first week of term in March. Busy times for us all in helping the esop serve the wider economy.

Malcolm Hurlston CBE

Mike Landon, executive compensation director at **MM & K** said "The ESOP Centre has campaigned for many years for these limits for all-employee share plans to be increased at least in line with inflation. The final breakthrough seems to have been achieved as a result of the recommendation by the Office of Tax Simplification (OTS) that the limits should be reviewed on a reasonably regular basis." Mike represented the Centre on the OTS Share Schemes Consultative Committee.

The political aspect of the timing of George Osborne's moves was clear - for the Chancellor to spike Labour's guns ahead of the 2015 General Election campaign. Shadow Chief Financial Secretary Chris Leslie, who was guest of honour at the Centre's Awards Dinner 2011, had let it be known that he was in favour of raising the approved share scheme investment limits for employees, should Labour win.

The new caps form part of an additional £25m investment in employee ownership initiatives.

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For example, the Chancellor announced tax reliefs for employee controlled companies (first trailed earlier last year). These reliefs comprise a capital gains tax exemption for the sale of shares that result in a controlling interest in the company being held by an employee trust and an income tax exemption for bonuses of up to £3,600 paid to employees of employee owned companies.

In addition, greater flexibility was announced for SAYE and Company Share Option Plans (CSOPs) on takeover or rollover of options. **Robert Postlethwaite**, of employee share ownership lawyers and Centre member **Postlethwaite**, said: "These schemes will now be able to permit tax-advantaged exercise of options within seven days before or after a change in control of the relevant company, or following the reorganisation of a non-UK company. SIPs will be able to stipulate that partnership shares and dividend shares can be subject to forfeiture on cessation of employment, provided that certain conditions regarding the price paid for the shares are satisfied. Taken together with the greater flexibility which the Government introduced for tax-advantaged employee share schemes in Finance Act 2013, these schemes will now be even more attractive for independent companies."

Mr Postlethwaite pointed to the further announcement that some simplification would be introduced this year to the tax treatment of *unapproved* employee share schemes. Two such measures to be implemented are: (i) amendments to the tax treatment of employment-related securities and securities options awarded to internationally mobile employees; and (ii), a simplified method of valuing listed company shares for tax purposes, by reference to the closing price. Finance Bill 2014 will include provisions on the tax treatment of employment-related securities (ERS) and securities options (ERSO) held by internationally mobile employees. These changes include the recommendations on apportionment made by the Office of Tax Simplification. The amendments are expected to come into force for ERS and ERSO acquired on or after September 1 2014.

Proposed amendments to the taxation of share awards made to internationally mobile employees will be welcomed by many, although some employees will be adversely affected, said Centre member **Deloitte.**

Measures were announced to ensure that certain self-employed workers supplied by intermediaries based in the UK to other businesses will be treated for tax and NIC purposes as employees.

The Chancellor had already extended his largesse to participants in the popular HMRC approved Enterprise Management Incentive (EMI) options based scheme by raising the maximum value of outstanding share options held by any individual EMI participant from £120,000 to £250,000.

The raising of the SAYE and SIP investment limits by the Chancellor was widely praised:

"This is very welcome news and comes after many years of lobbying," said Centre member **Abbiss Cadres LLP.** "The SAYE plan in particular now has the potential to become a very valuable part of an employee's total reward package. The changes come on top of the broadening, earlier this year, of the type of company that can operate HMRC approved plans, and the new self-certification regime which will come into effect next year, and show the government's continued commitment to promoting tax efficient employee share ownership." Guy Abbiss added: "The indirect employee ownership model using an employee trust is still relatively rare in the UK. It remains to be seen whether these measures will be sufficient to tempt existing majority shareholders to embrace employee ownership as a route for selling their holdings."

A doubling of the amount employees can contribute to SAYE schemes, and the significant increase in SIPs limit, will help thousands of people who benefit from the success of their employer, said Centre member **YBS Share Plans**, one of the UK's biggest providers of all- employee share plans. Andy Caton, corporate development director at Yorkshire Building Society said: "There are real advantages for encouraging employees to directly benefit from the success of their employers so the doubling of the contribution limit by the Government is great news. Almost a quarter of the 170,000 employees who currently save through schemes managed by YBS Share Plans are at their limit of what they can save, this is therefore a very positive move by the Government. We would expect a large proportion of people to increase the amount they save through their salary when these changes take effect in April next year."

David Pett of Centre member **Pett Franklin & Co**. said: "These changes should be seen in the wider context of moves to encourage the use of these plans to support wider share ownership. When combined with the simplification of the rules relating to the plans, the removal of the need for prior HMRC approval and allowing existing owners with a "material interest" in the companies to participate, the scope for the use of these plans to encourage wider share ownership tax effectively is increasing significantly and the total benefits available can be substantial. With the maximum use of reliefs under each of the schemes but without the benefit of any share price growth, a basic rate taxpaying employee could receive shares over a three year period with a total value of £49,500 in return for an effective investment of £21,672 after tax relief, delivering a tax free profit of £27,828. Those benefits increase further if the share price increases during that time."

He added that SIPs and SAYE schemes should be reconsidered by all independent companies, particularly private companies which may not have been able to use such schemes under the old legislation and where the scope for share price growth may be more substantial than with a well established listed company.

Centre member **Linklaters** said: "This is good news. The Sharesave limit has not been increased for more than 20 years and the limits for Share Incentive Plans have never been increased. Companies with upcoming Sharesave launches or free share grants might want to think about delaying until April 6 2014 to give their employees the chance to take advantage of the new limits. In most cases, no shareholder or HMRC approval will be required to take advantage of the new rates but the rules should be checked.

"On the downside, the increased limits, if taken up, will increase the cost of running approved plans so companies will have to consider carefully whether they can afford to offer participation at the higher levels. There is, of course, nothing to stop companies keeping existing limits but:

- employee expectations may be high; and
- some plan rules might automatically give employees the right to participate at the higher level so it is important to check the plan rules."

Matthew Findley, of Centre member **Pinsent Masons**, said that the increased limits on popular and established share plans Sharesave and the Share Incentive Plan (SIP) were "one of the most welcome recent boosts" to all-employee share plans. Although recent Government initiatives had been welcome, they had been seen as at the margins of how employee share plans are operated by many companies, he observed. "Lobbying has been going on for a number of years with a view to securing an increase in the Sharesave and SIP limits given that, amongst other things, the Sharesave limit has been at £250 since 1991 and the SIP limits have not been changed since the SIP was introduced in 2000," he said. "Many companies will be keen to give employees the opportunity to increase their investment in Sharesave and/or SIP. If economic conditions continue to improve, and disposable incomes begin to rise, this may offer a significant boost to employee equity participation if share prices continue to perform well. The increases are pleasing evidence that the Government appears to be aware of the greater business interest in all-employee share plans. The wider efforts to extend employee share ownership, the 'fairness agenda' coming out of the executive pay debate and related developments have led to many companies revisiting their all-employee share plans. These changes will only increase the number of companies looking at how best to extend equity participation to their wider workforce."

Recent research by York University and Leeds University in conjunction with YBS Share Plans showed that 39 percent of SAYE participants save *only in this way*, rising to 58 percent for those employees who earn less than £20,000. "Many people who do benefit from the success of their companies would otherwise not have money put aside for the future without the ease of saving money from their salary every month, which is why this significant increase in the amount which can be saved will be so valuable," added YBS Share Plans.

Share buy-back at Actelion to combat dilution

The board of Swiss based Centre member **Actelion Ltd** approved a programme to buy back up to 8.31 percent (up to 10 million shares) of its currently outstanding share capital over the next three years. The repurchased registered shares will be used for the servicing of existing employee option and share ownership programmes, as and when vesting arises. This will compensate for a possible dilution of earnings per share as a result of the share ownership schemes. At the closing price on December 4 2013, the maximum buyback volume amounted to CHF 720m (£490m). The programme began on December 9 and will continue until December 8 2016 at the latest. It will be handled through the normal trading line on the SIX Swiss Exchange. UBS has been commissioned to repurchase the shares. The terms of the buyback programme will be published on the company's website (www.actelion.com).

Centre seeks Govt action over demise of Edwards' share scheme

Centre chairman **Malcolm Hurlston CBE** has written to Business Secretary **Vince Cable**, protesting over the imminent demise of the **Edwards' Group** International Sharesave scheme, which won the *Best Employee Share Plan 2013* award at the Centre's annual awards reception and dinner last November.

The Centre wants the government to act, possibly by tweaking the Companies Act, to require all foreign based acquirers of UK companies to *replace* broad-based employee share schemes, which normally have to be wound up when the new owner buys out existing minority shareholders. At present, they are under no obligation to do so.

Swedish based **Atlas Copco Group** has disclosed that it will terminate Eso schemes within Edwards Group once its takeover of the company is complete.

In addition, **Lord Stoneham,** Lib-Dem spokesman on BIS Department matters in the House of Lords, has been asked to take up the issue.

Mr Hurlston told Mr Cable: "At a time when the Coalition government is doing so much to promote employee ownership, it is distressing to see a foreign acquirer, Atlas Copco, extinguish a successful employee share scheme in a British company. Last month our guest of honour, ABI director-general Otto Thoresen, proclaimed Edwards Group as having introduced the best employee share scheme worldwide at the Centre's annual awards ceremony.

"Days later, it became known that the scheme would be extinguished and not replaced, once the impending takeover by Atlas Copco has met regulatory requirements in the new year.

"This is not a rare event. Takeovers by European, as opposed to US companies, often pose such a threat. I would urge you to examine how British share schemes can be protected in future. Credit to Santander: It took the time to examine the employee schemes at the then Abbey National and introduced its own as a result."

As the chairman points out, most large US based acquirers know all about Esos, so when they take over UK based companies which have a strong tradition of employee share ownership schemes they usually replace the original scheme with one of their own. UK employees can accept this because not only do they have to be bought out of their old scheme by the acquirer, but they get a replacement Eso scheme as well.

However, this is often not the case when either Middle or Far East based acquirers are concerned and nor when the acquirers are from certain European countries, such as Sweden, in which employee share ownership has not yet really taken root.

The threat posed to UK Esos is illustrated by the publication of recent Office for National Statistics tables on mergers & acquisitions involving UK companies in the third quarter of last year (2013). During Q3, there were 46 acquisitions of UK companies by foreign companies (inward acquisitions), an increase of 39 percent (13 transactions) when compared with the previous quarter (Q2). Although most significant UK transactions which involved foreign companies during Q3 were piloted by US based corporations other UK companies were acquired by Middle East based sovereign wealth funds, like the one that scrapped all the employee share schemes at P & O after the famous shipping line was acquired by Dubai Ports World.

Solium acquires GlobalSharePlans

Solium Capital, a leading global provider of software-as-a-service for equity administration, financial reporting and compliance, announced that it will acquire **GlobalSharePlans**, a leading online provider of regulatory and tax advice for companies with global equity incentive plans. Both companies are Centre members. Kevin Lim of Solium and Mike Pewton of GlobalSharePlans will share a speaking platform at the Centre's Global Employee Equity Forum in Davos on February 6 & 7. GlobalSharePlans provides regulatory and tax advice through online databases, automated alerts and a network of experts spanning more than 150 countries, helping companies to put in place international equity incentive plans across multiple tax jurisdictions and ensure compliance with local laws and regulations. GlobalSharePlans provides a strong functional complement to Solium's Shareworks (TM) platform, further enhancing Solium's industry leading global taxation and compliance services that help reduce the cost of administering global share plans.

The acquisition will by financed by a mix of cash and the issue of about 200,000 new shares in Solium. The transaction is expected to be ratified within days. Its completion is subject to approval by the TSX for the issue of the shares.

Solium Capital provides cloud-enabled services for financial reporting, compliance and the administration of global equity incentive plans. From operation centres in the US, Canada, the UK and Australia, its innovative software-as-a-service (SaaS) technology powers share plan administration and equity transactions for more than 3,000 corporate clients with employee participants in more than 150 countries.

UBS Wealth Management has sold its European stock benefit plans business to **Montagu Private Equity,** the owner of high street retailer Maplin Electronics. The deal, which comes after a spate of sales by Montagu, comes as the Swiss bank seeks to offload non-core assets from its balance sheet. Terms of the deal were not disclosed. The off-loaded company, ***Corporate Employee Financial Services (CEFS) International,*** operates employee share schemes for around 100 corporate firms across Europe, serving about 780,000 people. "UBS has developed CEFS International into one of the leading firms in the employee compensation plan industry in Europe and Asia," Montagu director Mads Hansen said. "Our research has shown that there is nevertheless clear scope for further organic and acquisitive growth." UBS Sergio Ermotti has said he wants to simplify and shrink the investment bank. - See more at: http://tinyurl.com/o5k3kwc.

Centre offers CBI meeting on CSOP

Centre chairman Malcolm Hurlston CBE has written to Confederation of British Industry (CBI) director-general, John Cridland, offering to brief him on the value of the approved Company Share Option Plan (CSOP) as a means of incentivising employees. This

followed a surprising annual New Year's message from Mr Cridland in which the latter publicly called for better pay and more opportunities for employees generally. "There are still far too many people stuck in minimum wage jobs without routes to progression, and that's a serious challenge that businesses and the government must address," said Mr Cridland. "If we get productivity going, we are creating more wealth, and we can share it. The message is, if the economy is growing, we can have everybody swim upwards. Businesses should deliver better pay and more opportunities for their employees, provided we get the productivity" added the CBI boss.
Mr Hurlston told him: "The CBI has long been a supporter of all-employee share ownership schemes and your New Year message opens the way to an important new initiative. The mainstream approved schemes ShareSave and SIP received a massive boost in the autumn statement, along with support for more rarified employee ownership ideas. This will help the relatively well paid more than the rank and file since they have more to save and spend. Where you could make a difference is by espousing the neglected CSOP, which is open to all employees and particularly suits part-time workers and the low paid since it is very cheap to operate. However in the real world, CSOP suffers from its very pluses: intermediaries are hardly involved and without that push, little happens. Were CBI to espouse and publicise CSOP it would at a stroke help your ideas of better rewards for the low paid to become real, at very modest cost indeed to your members."

On the move

Sean O'Hare has retired from Centre member **PwC,** where he was head of human resources at partner level. Sean, an expert on executive remuneration, told *newspad*: "I am lucky enough to have that zero in my birthday which means that under the PwC partnership deed, from 1 January 2014 I will now have more time to spend with the family, take longer holidays, practice my golf and do all those things we have been dreaming of! I will be continuing my pro bono work (with The Financial Times Ned Club, the Rugby Football Union, ICAEW, & the Kilfinan Group) and my consultancy activity under my new company, **Boardroom Dialogue Ltd**. My consulting work includes Board Effectiveness Reviews, Business Coaching and acting as a sounding board to Chairs of Remcos." Mr O'Hare, a former Centre conference speaker, is holding a send-off party in London on January 29. Business associates and colleagues are invited to help him celebrate his PwC career at Simpsons in the Strand, from 1830 to 2030. His new contact details are:
email: Sean@BoardroomDialogue.com
telephone: +44 7802 739959.

Centre plays key role in new European Commission Eso project

At the request of the **European Commission**, the Centre has joined forces with Italy's second largest trade union, Confederazione Italiana Sindacati Lavoratori (CISL), which has 4.5m members; the German strategic policy think-tank Adelphi; the Spanish small business association, CONFESAL; the European Trade Union Confederation (ETUC) and others, in order to develop an EU-wide implementation strategy for broad-based employee equity plans.
This major project will involve Centre experts and support staff contributing ideas and reports to workshops in Florence, Milan and London later this year.
The aim is to monitor the presence of economic democracy in the implementation of the EU2020 strategy, the Single Market Act and EU social policies. The project partners will track the presence of economic democracy tools in national reform programmes and country specific recommendations as issued in the last 18 months.
In addition, the project partners will map forms of employee involvement in the EU as part of the strategic plans of member states and how best to exchange detailed information on practices which better serve a thriving social market economy. The project will show how employee participation has evolved into more complex and effective forms of employee involvement in company governance and the economic life of the business. Additional focus will be on practices carried out in larger strategic plans to increase investment (some from venture capitalists) in social innovation and in the socially oriented market economy, for instance through public-private partnerships.
Specifically, Centre expertise will highlight examples of: how to introduce Eso in state organisations, e.g. the **Royal Mail**; how to retain social values in part-privatised organisations; and how to set up more public-private sector partnerships, such as **MyCSP,** the hybrid part-employee, part-state, part-privately owned new company set up to administer civil service pensions after the spin-off of the former government department.
Furthermore, the Centre will help produce new policy on public procurement in EU law, an issue about which chairman Mr Hurlston spoke out during an EU Commission sponsored conference in San Sebastian, Spain, last year.
This new contract consolidates the Centre's standing as the Commission's main UK partner in all EU-wide projects centred on employee share ownership - or employee financial participation (EFP) as it is called on the European mainland.

CONFERENCES

DAVOS: Feb 6 & 7

Stefan Bort of **Prudential Assurance** promises verbal fireworks during the Davos delegates' open debate, as he plans to air clients' views on the quality of service suppliers in the industry. Two recent additional presentations have reinforced a top quality programme: New York attorney **Harvey Katz** (co-chairman of the compensation & benefit practice of Fox Rothschild LLP) will deliver a talk on the latest trends in US executive compensation, while **Jeremy Mindell** (director of tax and share schemes advisor Primondell) will be discussing new accounting tax problems for share schemes. This, the Centre's 15th Global Employee Equity Forum, takes place in the five-star Steigenberger Belvedere Hotel in Davos Platz on **Thursday February 6 and Friday February 7.**

The Davos speaker line-up is:

Alasdair Friend & Narendra Acharya of **Baker & McKenzie LLP; Fred Whittlesey** of **Compensation Venture Group; Martin Sheridan & Martyn Drake** of **Computershare**; **Martin Osborne-Shaw** of **Equiniti Executive** (formerly Killik Employee Services); **Harvey Katz of Fox Rothschild LLP ; Mike Pewton** of **GlobalSharePlans; Mike Landon** of **MM & K; David Pett** of **Pett, Franklin & Co. LLP; Jeremy Mindell** of **Primondell; Andrew Cooper of RBC Wealth Management; Kevin Lim** of **Solium Capital (UK)** and **Alan Judes** of **Strategic Remuneration. Peter Mossop** of **Sanne Group** will chair the trustee panel session.

Download the e-brochure from :
www.esopcentre.com/event/davos-2014-diary-dates for full programme details.

The 2014 conference e-brochure is logo sponsored by Centre trustee members **Appleby Global** and **Bedell Group:**

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***Bedell** is a leading provider of legal and fiduciary services with more than 300 partners and staff in key financial centres including Jersey, Guernsey, London, Dublin, Geneva, Mauritius, BVI and Singapore. Its offshore law firm, Bedell Cristin, was founded in 1939 and offers comprehensive Channel Islands, Mauritian and BVI legal advice. Its trust company, Bedell Trust, has been providing fiduciary and administration services offshore and onshore since 1971. Experience and commitment to excellence have earned Bedell a strong client list of world class institutions, corporates, high net worth individuals and intermediaries. Contact: Grant Barbour, Partner, Bedell Group +44 (0) 1534 814627*
email: grant.barbour@bedellgroup.com

Thirty-five registrations have been received to date. Register now in order to secure a room in the conference hotel, the Belvedere.

Attendance fees**:** The conference delegate package comprises: two nights (*Feb 5 & 6*) accommodation in the Steigenberger Belvedere Hotel (half-board, single occupancy basis) + entrance to all conference sessions + cocktail party (partners welcome) + coffee break refreshments + bound delegates' handbook). Non-members may also attend for a separate price. This event is CPD accredited and is worth 11 hours. For special offer prices please contact international director Fred Hackworth: fhackworth@hurlstons.com. Davos delegate registrations can be sent to Fred, with copy to esop@esopcentre.com.

JERSEY: March 14

Speaker slots are available for the Centre's 2014 annual **Jersey** employee share schemes seminar for trustees, which will now take place March 14. Our Channel Island seminars, held in association with the local branches of the **Society of Trust & Estate Practitioners (STEP),** provide an informative and relaxed environment in which to network and keep up with the latest developments in share schemes and employee benefit trusteeship. More information on venue and themes will be published shortly. If you are interested in speaking, please contact Harry Atkinson asap. email: hatkinson@esopcentre.com (tel: +44 (0) 207 239 4970) with your details and suggested topic.

NEW YORK: March 27

Preparations are advanced for the Centre's first employee equity conference in **New York** on **Thursday March 27 2014**. This event will take place at the New York office of Centre member **Linklaters,** whose generous support has made this event possible. The conference will bring together senior figures from the US and UK to discuss how equity incentive strategies operating at both the executive and all-employee levels can enhance sustainable business growth. Antonio Falato, capital markets economist in the Federal Reserve Board's research and statistics division, will lead the discussion with a talk on optimal ceo incentives. Keep an eye out for further details, including a detailed agenda, to be released in the coming weeks. To register your interest in attending this event, please contact Harry Atkinson at hatkinson@esopcentre.com (tel: +44 (0)207 239 4970).

ROME: June 5 & 6

Speaker slots are being booked rapidly for of the Centre's 26th annual conference in Rome on Thursday June 5 & Friday June 6 2014. The Rome agenda will feature 16 presentations, of which nine have been allocated already.

Among the confirmed speakers are: **Lesley McFee** of **Pearson Group; Marco Cilento** of the **European Trade Union Confederation and CSIL; David Ellis** of **KPMG; Patricia Boepple** of **Global Shares; Leslie Moss** of **Gateway Consulting; David Craddock** of **David Craddock Consultancy Services; William Franklin** of **Pett, Franklin & Co. LLP** and **Alan Judes** of **Strategic Remuneration.** The conference will also feature several speakers from lead sponsor **Equiniti**.

Our conference venue, **Residenza di Ripetta**, is a converted 17th century convent in the heart of Rome, superbly located between the Piazza di Popolo and Spanish Steps. This four-star+ hotel features high ceilings adorned with old frescoes, original arches, elegant statues and a large inner courtyard garden with gazebos. The Field of Mars, Palazzo Borghese and Via Corso, Rome's most famous shopping street, are little more than 100 metres from this hotel, which is part of the Royal Demeure Luxury Hotels group.

Phil Ainsley, Managing Director of Equiniti, Employee Benefit Solutions, said: "We're delighted to be lead sponsor of this international conference which we see as part of our engagement, thought leadership and commitment to the industry. It also reflects our burgeoning global share plan capability and bespoke services to executive reward following our acquisition of Killik Employee Services."

The Centre has arranged special terms with the Royal Demeure group, permitting our delegates to stay on over the weekend in the hotel for the same discounted rates as we are paying for our package deal reserved rooms allocation.

Those members who wish to acquire a speaking slot in Rome should contact Fred Hackworth at fhackworth@esopcentre.com asap to discuss the possibilities. This event has already attracted considerable interest among members and once we have filled the available slots no further speaker propositions will be entertained.

The Centre will be working with **Equiniti** in the months ahead to ensure that this major event will showcase an exciting and interesting programme for service providers and plan issuers alike.

Equiniti provides award-winning Executive, Sharesave & SIP plans and a wide variety of other employee services. It is the leading share plans administration provider for UK-listed companies and manages the second largest UK Flexible Benefits plan. Equiniti's clients vary in size, from 30 to more than 300,000 employees and span both FTSE 350 and overseas listed companies.

Institute News

Following the success of the 2013 course planning has been completed for the 2014 online Certificate.

The term will start on March 3 2014 and, following suggestions from students, some changes have been made to smooth the work pattern.

This is the world-leading online Esop qualification: only the exam part needs to be taken in person and these will be arranged in London, Edinburgh, Jersey and Singapore. Other locations may be added.

The cost of the 2104 course will be £650.00 and registration is now open at www.esopinstitute.com

Chairman defends EBTs

Centre chairman Malcolm Hurlston CBE has defended the role of employee benefit trusts (EBTs), which have been increasingly subject to investigation by HMRC officials seeking evidence of corporate tax avoidance or evasion.

The trade magazine *Employee Benefits* published a letter from Mr Hurlston praising the work of the Channel Islands to prevent the misuse of EBTs in cases of disguised remuneration. The magazine shone the spotlight on EBTs following several high-profile cases brought by HMRC - including that involving Rangers Football Club - over the use of employer-to-employee loans ('Buried Treasure', November 2013).

Disguised remuneration rules introduced by the Coalition government now impose an immediate income tax charge whenever a trust makes payments or assets available to specific employees, or has 'earmarked' them to specific individuals.

Mr Hurlston said: "Times have moved on for employee benefit trusts. Recently the UK signed inter-governmental agreements with Jersey and Guernsey and PM David Cameron confirmed a new 'British Isles' approach, as advocated by the Esop Centre.

"This follows the careful work by the Channel Islands and HMRC to prevent the misuse of trusts as disguised remuneration. Jersey and Guernsey are now internationally recognised as the leading centres of trust expertise. That is why many UK and multinational companies use them. The concerns in the article lie in the past."

For decades, tax-efficient discretionary EBTs, onshore or offshore, have been set up by employers to hold employee assets, such as remuneration and shares, and minimise employees' income tax and NI obligations.

Stephen Woodhouse, who now works for **Pett, Franklin & Co**. said: "A private employer will often want to have an EBT because it needs to provide a market for people to sell their shares. Some public companies too may have EBTs for this purpose, and to avoid the complexity of using Treasury shares." EBTs are often useful tools in mergers and acquisitions, and as a defence mechanism they can

protect assets from creditors in the event of an employer going into administration.
Andy Goodman, a partner at accountancy firm **BDO**, said: "An employer could have made a disposal of a business and have a lump sum that is fully taxed and now wants to allocate it to employees. That is put in an outside pot [the EBT], where the directors will no longer be able to touch it."

Bonuses decouple from profits

The link between pay and profits for bosses at some of Britain's biggest companies has broken, according to a new study by a leading accountancy group. **KPMG**'s analysis of directors' pay at FTSE 100 and 250 companies revealed that while median salaries rose by just three to four percent this year, there was a disconnect between bottom line performance and the use of executive bonuses at a number of companies.
The research found that a third of FTSE 350 companies paid their chief executive a bonus of 80 percent of the maximum they could be eligible for and the majority paid 60 percent. *However, a quarter of these companies suffered a drop in profits during the year the bonuses were awarded.*
David Ellis, a KPMG partner and head of the firm's remuneration practice, said: "*From a shareholder perspective, and without further explanation, this may lead to a conclusion that some annual bonus payments were not justified.*"
The findings could risk a fresh wave of investor anger at executive pay, recalling the so-called Shareholder Spring of 2012, which claimed several high-profile scalps including **Aviva** boss Andrew Moss, who stepped down just days after a revolt over his pay at the insurer's agm. The prospect of more investor activism could be heightened by new UK rules on directors' pay which came into effect for companies that end their financial years on or after October 1 2013. These changes give shareholders a binding vote on a future pay policy, as well as an advisory vote on how that policy has been implemented during the financial year being reported on.
A lack of information available on executive bonuses, and the increasingly complex ways performance is judged, risks angering shareholders. Centre member KPMG found that the number of performance measures being used in annual bonus plans has increased in recent years, with the majority of companies now using three or more, and only a small number using a single measure.
"Many companies only disclose performance measures at a very high level," Mr Ellis said. "This is one of the areas where we expect to see a particular focus in 2014 now that new disclosure requirements have come in. The new mandatory reporting requirements should be seen as an opportunity rather than a compliance obligation. Both the companies and the shareholders have a common interest in better aligning pay and performance so in theory this should be a win-win. The reality is that companies measure performance over a broad spectrum of measures, rather than focusing entirely on profit. Yet, there will be instances where boards have a long-term strategy meaning they will need to set pay awards as each year end comes around."
The study found that bonuses account for 31 percent of total earnings at the median for ceos of blue-chip companies, and 33 percent for those in charge of mid-cap businesses.
Mr Ellis added: "2014 will be the year where companies will need to better explain exactly what performance has been rewarded, and increase the level of transparency around annual bonus payments to avoid the adverse reputational consequences of a negative shareholder reaction."
*Global investment banks are set to cut pay for the third year in a row despite a rise in profits, highlighting efforts to put shareholder returns ahead of employee remuneration. Nine of the largest investment banks in the US and Europe are on track to shrink their reward packages for executives, said the *Financial Times.*

Barclays considers new pay wheeze

Barclays may pay its top two executives share allowances as the European Union introduces limits on bonuses, according to insiders at the bank. *Bloomberg News* said that the plan, which would have to be approved by shareholders, would involve a portion of fixed pay for ceo Antony Jenkins and fd Tushar Morzaria being paid in stock.
The EU brokered a draft deal in February last year to outlaw banker bonuses that are more than twice fixed pay, a move lawmakers said would prevent excessive payouts and curb irresponsible risk-taking. The *Financial Times* said that several other big banks across Europe are thinking about taking similar steps, according to remuneration experts.
"Most large banks operating in the EU are planning to pay allowances at least partly in shares for the most senior executives," noted Tom Gosling, head of PwC's reward practice. "This is to reassure shareholders that executive interests will remain strongly aligned with theirs, despite the increase in fixed pay."
Bankers' bonuses will always be controversial, said Barclays ceo Antony Jenkins: "Firstly, you only pay for performance and you pay competitively, but you don't pay more than you have to," he said while guest editing the BBC Radio 4 *Today* programme.

More reward modesty

Chief executives' salaries in FTSE 350 companies experienced a modest average rise of 2.6 percent during 2012/2013, a recent remuneration report revealed. More than a quarter of these ceos received no increase at all in base pay, while 19 had not taken a rise in basic salary for two years running. The report by consulting company **EY,** entitled *Into the Light*, said that there had been a marked shift in approaches to executive pay, with companies far more able to demonstrate the link between pay and business performance.

EY found that the larger listed companies were the most restrained on salaries and bonuses. According to the report, ceo bonus payments in FTSE 100 companies decreased by 5.2 per cent in 2012/13, compared to an increase of 0.3 per cent in the FTSE 250.

Two-fifths of FTSE 100 companies awarded bonus payments but made them subject to deferral (e.g. making them dependent on long-term performance). By contrast, only 25 percent of FTSE 250 companies imposed similar constraints on bonuses. Looking ahead, there would be more caution around ceos' shareholding interests, said the report.

EY predicted that within the next tax year or two, more than 70 percent of FTSE 100 companies will require executives to hold double the value of their base salaries in shares, compared to just over one-third of FTSE 250 companies. More FTSE 100 companies will require executives to hang on to shares for longer – the number of companies requiring 'post vesting holding periods' will be five percent higher than in the FTSE 250.

Mark Shelton, EY's head of executive compensation and reward, said that greater scrutiny from investors and new legislation around disclosure had helped to fuel this more restrained approach to executive pay: "While compliance with the new regulations will continue to be a focus for all UK companies in 2014, the underlying issue is demonstrating a better linkage between pay and sustained long-term performance. This change has provided a real opportunity for organisations to go back to their core principles and assess the financial and non-financial behaviours their remuneration packages should be driving."

Key reward reporting challenges of 2014 would be threefold: disclosure (working out what stakeholders need to know and anticipating concerns); linking pay and performance (looking at metrics and links between personal and corporate performance); and flexibility (striking a balance between providing detail to shareholders while being able to react to unforeseen circumstances).

Bonus bonanza

Aberdeen Asset Management ceo Martin Gilbert saw his pay package top £5m for the first time after delivering bumper returns for shareholders. Although his £500,000 basic salary is modest in comparison to that of other FTSE 100 ceos, a £4.6m bonus took his total to £5.1m, up from £4.5m last year. In the past three years Gilbert has seen his pay total more than £14m from the firm he co-founded in 1983. Gilbert wasn't the only £5m-plus director on Aberdeen's board last year, with Hugo Young, who heads up the group's Asian operations, receiving just £5,000 less than Gilbert. Anne Richards, chief investment officer, received a £1.9m bonus as part of a total package of £2.3m compared to £2.1m in the previous year. The three other executive directors at the company, which recently unveiled a deal to buy Scottish Widows Investment Partnership from **Lloyds Banking Group**, each received packages of over £1m. In total, boardroom pay for the year to September 30 2013 was £16.9m, up from £14.1m. Bonuses paid to directors are 75 per cent in Aberdeen shares which vest over a four-year period.

New **RBS** ceo Ross McEwan has received 1.5m shares in the state-owned bank, as part of a recruitment package to match shares he forfeited on leaving his previous job at the Commonwealth Bank of Australia. RBS said that the 454,106 shares had vested at a price of £3.40, worth £1.54m. McEwan immediately sold 214,019 of the shares to cover tax liabilities arising from the vesting. A further 1.05m shares which he is due, worth £3.5m on the recent £3.38 closing price of RBS shares, cannot vest until August 2015.

Goldman Sachs paid 115 of its top staff an average £2.7m in 2012, up by 50 percent on the previous year. The Wall Street firm published the pay deals to comply with EU rules which require banks to reveal how many "code staff" – those who take and manage risks – they employ and how much they are paid in cash and shares each year. Goldman revealed that it paid them £122m in cash and, according to estimates by *The Guardian*, £200m more in shares, which they will receive over three years and must hold on to for five years.

JP Morgan paid 126 of its top London staff a total £263m in 2012, a year in which it made record profits of £12.7bn – up 12 percent from the previous year. This pay port was divided into £41m in salaries and £222m in bonuses, half of which cannot be sold for at least two years.

Are reward ratios out of control?

As *The Economist* magazine reported in June, it takes a UK employee on a median wage four days to earn what the average ceo collects in an hour - £616. It takes a low paid worker eight days. Last year, the ceos of FTSE 100 companies took home salary and bonuses totalling £3.7m on average. That is *130* times the national average wage of £27,174. In 1998 the ratio between UK ceo reward and the average employee's pay was 45:1. Today it is *185:1*.

In the US, however, the reward ratios look even worse. A report into the compensation of a handful of the semiconductor industry's ceos found packages that ranged from less than $3m to almost $20m. The average pay of 327 ceos of the biggest companies in the US was $12.3m in 2012, including salaries, bonuses, perks, stock awards, stock options and other incentives, according to research conducted by the AFL-CIO.

*The union reported that the ceo of an S&P 500 Index company made, on average, **354 times** the wage of a rank-and-file US employee in 2012.*

There is no legislation capping pay for executives in what IC Insights says are the countries that produce most of the world's semiconductors -- Japan, South Korea, Taiwan and the US. However, several other countries are considering limits to executive pay.

In the US, the Securities and Exchange Commission proposed in September a new rule that would require public companies to disclose the ratio of the compensation of its ceo to the median compensation of its employees.

In November, Swiss voters rejected a proposal to curb executive compensation. The '1:12 -- for fair wages' initiative, which proposed capping executive salaries at 12 times the level of the lowest paid employee, was rejected by 65.3 percent of voters. It failed to win majority support in any of the country's 26 cantons.

European Union policy for bankers earning a basic salary of more than £400,000 a year is to limit bonuses to twice the executive's annual salary. The proposal could affect more than 35,000 bankers worldwide, though it is being challenged by the UK government.

In Germany, officials vowed to take up pay inequity in the next parliamentary session. Chancellor Angela Merkel stated that "Exorbitance cannot be allowed in a free and socially minded society."

Ceos of French state firms are no longer allowed to earn more than 20 times the salaries of their lowest-paid employees. Thus salaries are capped at around $600,000. Meanwhile, Dutch officials announced new legislation that would cap golden parachutes at a maximum of €75,000.

Newcastle International Airport (NIAL)'s epic battle to prove that a law firm was to blame for awards of multi-million-pound bonuses to its former ceo and finance director has ended with a whimper after the company was awarded just £2 nominal damages. The Court of Appeal ruled that leading solicitors Eversheds had breached the duty it owed NIAL by failing to explain, in layman's terms, to the remuneration committee the impact of £8m bonus deals negotiated by John Parkin and Lars Friis.

However, the judges ruled that, even had an explanatory memo, written in plain English, been sent to the committee's chairwoman - eminent economist Rosemary Radcliffe - she would probably not have read it properly or understood its contents. Ms Radcliffe, said Lord Justice Rimer, had shown "carelessness of an unusual degree" and had "consistently misread, missed or misunderstood" important documents that did not fit her "preconceived understanding of their meaning and effect."

Raising the curtain on a new battle over which side will have to pay the enormous legal costs of the case, the judge ruled that Eversheds' breach had caused NIAL no substantial loss and limited the company's damages to £2.

Part-public-owned NIAL saw red when it realised that new contracts signed with Mr Parkin and Mr Friis in 2006 entitled them to bonuses totalling £8m on achieving a £337m re-financing deal for the airport. NIAL then took legal action against Mr Parkin and the estate of Mr Friis, who died of cancer later the same year. That case was settled confidentially in October 2008. The company accused Eversheds of acting negligently in taking instructions from Mr Parkin and Mr Friis when they should have known that the pair were "bargaining for themselves" and their interest was in obtaining the most generous contract terms possible.

NIAL was defeated in the High Court last year when a judge ruled that Eversheds had acted honestly and in good faith and had had no reason to doubt that Mr Parkin and Mr Friis were properly authorised to give instructions on the company's behalf.

Ruling on the company's appeal, Lord Justice Rimer accepted Eversheds' case that the executives did have authority to negotiate their own bonuses. However, the judge, sitting with Lords Justice Moore-Bick and Underhill, said the law firm had been *under a duty to provide Ms Radcliffe with a memo explaining, "in user-friendly language," what the changes to the executives' contracts meant in practice.*

No CT deduction allowed

The First-Tier Tribunal (FTT) has dismissed appeals by two companies against HMRC's refusal to give a non-statutory clearance in relation to a claim for a corporation tax deduction for an amount equal to an individual shareholder's gain on exercise of a share option. The individual shareholder concerned had

previously held directorships with the group.
Schedule 23 of the Finance Act 2003 permits corporation tax relief where a person 'acquires shares...by reason of employment'. Even though it was common ground that the individual did not receive the share options due to his employment or office, the taxpayer companies argued nonetheless that, under the deeming provision in ITEPA 2003 s471(3), a corporation tax relief was due simply by virtue of the fact that the options were granted by companies with which the option-holder had held office. ITEPA 2003 s471(3), they argued, should be read into an interpretation of Schedule 23. The companies justified this by arguing that the provision - 'by reason of employment' - set down in Schedule 23 was contained in paragraph 1 under the heading of 'Introduction', and therefore did not involve any substantive requirements. The FTT dismissed the various arguments made by the taxpayer companies, deciding that: (i) the provision in paragraph 1 could not "be quite so easily written off or dismissed as merely an introduction and not containing any specific conditions or requirements"; and (ii) that Schedule 23 could be read in its own right without having to use s471(3) as an interpretative lens.

Gaps in pensions auto-enrollment

Although two million employees have now been auto-enrolled into a UK workplace pension, three million others have been left out, according to a report issued by the Pensions Regulator. These are employees who are too young, too old or don't earn enough to qualify to be automatically enrolled. The Regulator confirmed that 3,670 companies have so far auto-enrolled since the programme began in October 2012. However, more than 4,000 companies are expected to auto-enrol in January and February this year alone, which may create a capacity crunch, according to Hargreaves Lansdown.
The financial service provider said: "It is extremely positive that two million people are now saving into a pension who were not before. Employers, advisers and providers need to build on this and help these workers to understand if they are saving enough, and how to make the most of their pension. Without this next vital step, the risk is we create a nation of pension zombies who fall off the savings wagon at the first bump in the road. The number of companies auto-enrolling is beginning to expand exponentially, and indeed the true test for auto-enrolment lies in 2014 and beyond. Employers have the difficult task of complying with the regulations, at a time when there will be unprecedented demand for the services of pension providers and advisers. Throw into the mix the fact that the government is still pondering the final rules, including a price cap, and 2014 has the potential to plunge the auto-enrolment programme into mayhem."

US clawback cases hard to find

When the Sarbanes-Oxley law was passed, its executive-accountability provisions were hailed as tough medicine that could generate a flurry of recoveries of unjustified bonus payments, said the *New York Times.* However, many pieces must fall into place before a case can be brought. The first requirement is a restatement of earnings, where a company goes back and adjusts previous results to reflect the accounting errors. The actions must also have been reckless or intentional. Finally, there must be recoverable executive compensation, such as a bonus received or stock sales made within one year. "We don't hesitate to pursue clawbacks when the law's requirements are met," said Andrew Ceresney, Securities & Exchange Commission (SEC) co-director of enforcement. Still, the hurdles limit the number of cases. Since 2007, when the SEC brought its first case, it has demanded forfeiture of compensation from executives at just 31 companies. Of those clawback actions, 13 have come in the last three years. Executive pay has been returned in just seven of them; the rest remain in litigation, or are stayed pending criminal trials. One reason for the lack of clawbacks from executive misdeeds during the 2008 financial crisis is that rather than restating earnings when the values of securities or loans they held plummeted, many financial companies simply wrote down the assets after the collapse. They contended that their rosy valuations of the securities in previous periods were appropriate, not fraudulent.

Cross-border tax info share

Following the meeting of the Global Forum on Tax Transparency in Jakarta recently, Luxembourg, Liechtenstein, Colombia, Greece, Iceland and Malta have agreed to share information on UK taxpayers automatically with HMRC through the pilot initiative agreed to by the UK, France, Germany, Spain and Italy in 2013. This means that 37 jurisdictions have now signed up to the pilot. See http://deloi.tt/1ikEcec

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