Vol 23 No 6 July 2011

it's our business

newspad of the Employee Share Ownership Centre

Government move to simplify the taxation of share schemes

The Treasury has announced a major probe into the complexity of the current taxation of employee share schemes. The wide-ranging review will be carried out by the Office of Tax Simplification (OTS).

This is what the Centre has been lobbying the Coalition government to do for more than a year.

Speed is of the essence because the govenrment wants the review to produce a report in time for the Budget next year.

At the same time, OTS will carry out a similar review into the taxation of pensioners' earnings, said the Treasury.

The OTS will recruit private sector secondees to work on both projects and will be forming two new Consultative Committees to help steer the work.

Alongside the civil servants in the OTS secretariat, leading share scheme practitioners (service providers) will play a key role in advising as to where the worst examples of excessive tax complexity are and how the rules might be simplified.

Approved share schemes will be the first to come under the OTS microscope, but the taxation of unapproved Eso schemes, including performance-related incentive schemes, will follow later on.

The OTS team is led by chairman Michael Jack, and tax director John Whiting, former tax partner at PwC and has a staff of six, drawn from the Treasury, HMRC and secondees from the private sector. These include Caroline Turnball-Hall, senior tax manager at PwC.

Newspad understands that some employee share scheme experts will be contacted personally by the OTS team, but others, who are particularly strong on the tax side and who are willing to help reform the system, may make themselves known to the OTS.

Mr Jack said in a letter to the Treasury: "We will examine the taxation of employee share schemes because this is an area that businesses have regularly cited to us as an area with too many tax code complexities and traps for the unwary, especially the HR departments that often have run such plans.. So we will be looking to see if there is scope to harmonise rules and make arrangements simpler to use.

"This will be a two stage project. Initially looking at the scope for streamlining more than 6,000 approved share schemes and then moving on to tackle the complexities inherent in the rules surrounding unapproved share schemes. There is also scope to use some of the methodology developed during our tax reliefs project to see how well policy objectives are being met," he added.

A Centre team, comprising chairman Malcolm Hurlston, assistant director David Poole, Mike Landon of MM&K, the reward consultants and David Pett, of Pett, Franklin & Co. LLP, met Mr Whiting in late March this year to lodge with the OTS the Centre's detailed plan for much greater tax simplification in the share schemes sector. The Centre's key proposal is for a new common and simplified framework to embrace all four approved share schemes. Unnecessary anomalies would be culled. The difference between shares and options would be maintained, but where there are now differences in material interests tests and eligibility there could be one single set of rules. The creation of the rational common framework would enable the government and partners

From the Chairman

We leave for Cannes (and it would be timely to join us) in good heart.

It is excellent that the Treasury and the Office for Tax Simplification have taken up the Centre's plan to make share schemes more attractive. Expert touches influenced by you should make them better to operate, easier to understand and suitable for a new blast of promotion. All to be achieved without further net burdens on taxpayers.

This is the chance of a lifetime working with a skilled OTS team to achieve step change with common sense and experience.

At the same time we see the shoots of progress in the EU and with our own trade union movement.

Finally heartening news for Asda employees; share schemes deliver. Let us spread the wages of capital ever more deeply.

Malcolm Hurlston

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

such as the Centre to breathe new life into employee share schemes.

An opportunity for re-branding and a fresh launch would be created within the framework of this new simplified tax regime, while preserving the overall tax reliefs currently enjoyed. Companies considering an employee share scheme would find it easier to compare and contrast choices. The rationale and structure of each plan would remain, together with the applicable tax benefits to encourage companies of all sizes to adopt and implement employee share schemes.

The Centre paper advocated several other key changes, including the scrapping of negative claw back in the SIP if the sponsoring company is sold within the first three years. The paper explained**: "**There is current enthusiasm among SMEs for SIP, but many are put off by the three-year claw-back period. For private unquoted companies this can be a big barrier as the total amount clawed back can be many times the amount of relief given owing to the potentially significant increase in value of the shares upon a sale of the company."

Esop expert David Pett said: "Although a participant is not charged to income tax (or NICs) on that part of his salary used to acquire partnership shares, if those shares are withdrawn from the SIP, or cease to be subject to the SIP because the participant ceases to be employed by the plan company, or any associated company within three years of the acquisition date of the shares he will then be charged to income tax and, if the shares are readily convertible assets (RCAs), NICs on the market value of the shares at that time. The amount of the NICs could then be considerably greater than the amount of NICs which would have been paid on the salary deducted and used to acquire partnership shares!" The problem for employers is that it is calculated not on what would have been paid originally, but on the current share value, when it is higher. The resulting NICs bill can therefore be sometimes unexpectedly high. The Centre would like to investigate ways of limiting companies' exposure to NICs in this instance, possibly through limiting the amount payable to the amount saved when the partnership shares were initially purchased by employees.

Other Centre proposals in the paper were that the government should:

*Unify the CGT treatment of SAYE-SIPP and SIP-SIPP transfers in order to allow both and increase the tax efficiency of moving money from Eso scheme savings to pensions.

*Raise the period of non-contribution on SAYE contract before the option lapses from six months to 12 months (or staggered depending on the length of the savings contract). This would demonstrate the government's understanding of savers' current hard times

* Review the current limit on contributions to an SAYE contract, which has not moved from £250 since 1991.

*Allow private equity and venture capital backed companies to implement Enterprise Management Incentives. In line with the Centre's recommendation on the rational common framework, simplified EMI rules would allow use by private equity and venture capital. The proposed change in status for Royal Mail may precipitate this in any event.

*Contract partners, such as the Centre, to promote professionally the advantages of EMI, the unsung exemplar of options based incentives to the SME sector.

The minister to whom the OTS will present its recommendations is Exchequer Secretary to the Treasury, David Gauke MP, who was guest speaker at the Centre's first share schemes Awards black-tie dinner at the Oriental Club in London three years ago.

In addition, chairman Malcolm Hurlston again wrote to the Treasury in May last year asking the Coalition government to overhaul the taxation of employee share schemes.

Terms of reference for both OTS projects will be published this month.

Mike Landon strongly welcomed the proposal to simplify the share plan legislation. He said: "The current provisions for approved share plans, particularly SIPs, are considerably more detailed than they need to be and this has discouraged many smaller companies from introducing all-employee share plans. The 69 pages of the Finance Bill dealing with disguised remuneration are a clear example of how the tax rules have become increasingly complex and uncertain," he added.

Later on the OTS will carry out further work to try and identify other parts of the tax system that are particularly complex. "Looking further ahead, we would like to review the whole field of employee benefits and expenses," said the OTS, in order to: *Simplify rules for employers, making the system easier to operate *Make the tax code in this important area more logical and understandable for employees *Test how well current rules encourage outcomes that policies intend and *Review the need for rules to be modernised to meet current and future working patterns. However, that project is on the back burner.

Contact the OTS at: ots@ots.gsi.gov.uk Website: http://www.hm-treasury.gov.uk/ots.htm

Cabinet minister to end reward for failure

Business Secretary Vince Cable pledged to crack down on the "ridiculous" remuneration packages handed to some of the UK's leading executives. He said that "rewards for failure" were unforgivable at a time when real wages were being squeezed.

Speaking at the Association of British Insurers' biennial conference, the Lib Dem cabinet minister warned he planned to bring "excessive and unjustified"

pay under control - by launching a fresh consultation into the subject this month.
Mr Cable is to demand more disclosure about bonuses and their link to company performance after criticising the ‘ethics of the Wild East’ in the City, which he said damaged the reputation of the UK.
Within days, two business and City heavyweights backed the Cabinet Minister’s outburst against excesses in top executive reward – Sir Victor Franks warning of more strikes and posible social disorder in Britain’s streets unless the widening gap between top and average pay levels was reversed.
Cable said that by convening talks with remuneration committee chairmen, who set complex bonus schemes for top executives, he hoped to find ways to “intervene sensibly” to end the culture of reward for failure.
He highlighted the faster pace of pay growth for the bosses in boardrooms – 32 percent – compared with the two percent average for typical wage earners. He said the faster rise in pay for FTSE 100 bosses was “actually outrageous”, particularly as the share index rose only seven percent during the same period.
“Britain does have some world-class executives and one of the real privileges of my job is dealing with them,” he said. “But let’s not forget that, using the FTSE 100 as a benchmark, investors have barely seen a return since the turn of the century. For most of that time, they would have been better off investing in government bonds.”
“Yet, in 2010, average total pay for FTSE 100 chief executives was 120 times that of the average UK employee. Back in 1998, the multiple was 45. I am intensely relaxed about generous returns for entrepreneurs and outstanding executives. But I am not relaxed at all about rewards for failure. And while nobody wants to see private sector salaries set in Whitehall, the government has a legitimate role in seeking answers to what is clearly a manifest market failure with wide-ranging implications,” Cable said.
Speaking at the same event, former City Minister Lord Myners said investors should be placed on company remuneration panels to scrutinise executive pay. He warned that responsibility for executive compensation “needs to be firmly placed in the hands of shareholders”.
While Cable did not set out his proposals, among the ideas he is considering are:
*A requirement that companies publish the multiple of the pay of their ceos to the average employee, matching a suggestion in Will Hutton's review into public sector pay
*Adopt more widely in the corporate sector new rules to make public the size of pay deals awarded to bankers outside the boardroom
He criticised shareholders, who he said had not really been challenging top pay and he attacked companies that had not attempted to restrain pay. “Ultimately, there is no substitute for leadership from companies themselves and their owners. To be frank, I don't see much evidence that remuneration committees have been living up to their responsibilities, or that major shareholders have been holding them to account,” he said.
Cable was backed – to some degree - by former **Marks & Spencer** ceo Sir Stuart Rose, who called for a national debate about the widening gap between executive reward and staff wages. Sir Stuart was commenting on the Hutton Fair Pay Review, which recommended that quoted companies should cap directors’ pay at a multiple of staff wages. He said that it was time to debate the issue: “There has to be a variation between what you earn on the shop floor and what the chief executive earns. The question is, by what quantum? One hundred times? One thousand? Two thousand? There’s no doubt about it, we have to accept that over the last year or three the division between the lowest paid and the highest paid has got wider, so that does need looking at. The biggest rule that I think people should set themselves is - no pay for failure. That’s what people really, really hate. It is a live topic of debate and it’s one that won’t go away.”
Rose, who was paid £4.3m in cash, bonus and shares over the year to April 2010 at M & S, added*: “There should be incentive schemes for companies which should be set up on a long-term basis, not a short term basis. As a ceo of a business, if you want to enhance your profits in any one year it’s quite easy to do. What you need to say to executives is, ‘You’re in it for the long term. If the company does well on a five or ten-year basis, you can do well and all the staff do well’.”*
There was support too from former Lloyds Banking Group chairman Sir Victor Blank, who described top bankers’ pay as “unconscionable.” Sir Victor warned that the widening pay gap between top executives and rank-and-file employees could lead to dangerous divisions in society and more strikes. He said: “You can’t have an on-going widening gap between top pay and average pay and I think that is worrying. I think we are at a time now when we’ve got some unrest over pensions and other issues, where – if we don’t start early to have a degree of moderation in the levels of pay, we risk more industrial unrest than we’ve had in the past.”
Contractual engagements mean that people like ousted ceo of Cable & Wireless Worldwide Jim Marsh leave with a pay off of £650,000, equivalent to one year’s salary, despite having presided over three profit warnings in 15 months. C & W was forced to announce a 50 percent cut in its dividend as earnings for the full year are expected to be up to ten percent below market expectations The annual report for this year reveals that Marsh received a total package of £780,000, up from £539,000, as well as incentive shares and performance shares.
However, former trade minister Digby Jones questioned how the cap on directors’ pay recommended by the Hutton review would work in practice. Lord Jones said: “If a check-out girl at Tesco earns £20,000 a year, which is five grand under the national average wage, and the ceo of Tesco, I have no idea but let’s say he’s on £1.5m a year – if you’re

going to say that differential is too great, can you tell me what it should be? It's a very difficult thing to determine at what point it's too much. I honestly don't know the answer. Someone who leads a bank into failure and walks away with £5m is an absolute disgrace. But what I do know is that a bank ceo deserves more than the clerk on the counter on the high street."

Labour leader Ed Miliband has said a Labour government would require companies to publish the pay gap between their boardrooms and the average earnings of their workers. Labour introduced a vote on remuneration reports – the first one to be voted down was GlaxoSmithKline in 2003 – but, as adverse votes are not binding on companies, they can ignore them, if they so choose.

The ABI said: "As institutional investors we agree that good results should be rewarded and we agree that it cannot be right to reward failure. This is why we have been tackling this issue. Investors have been tough on soft targets or shifting goalposts but we accept that this needs continued focus. We look forward to talking more to the government about this important issue."

According to Governance Metrics International, the corporate governance research firm, about half of all major U.K. companies have established targets for long-term executive incentive pay plans that link payout to the company's performance relative to a peer group. More than half of all major U.K. companies link long-term executive incentive payout to total shareholder returns. Less than a fifth of all major U.S. companies have implemented these measures.

Clegg calls for mass shares hand-out from state owned banks

A giveaway of government-owned shares in RBS and Lloyds, worth hundreds of pounds to British taxpayers, is being proposed by the deputy prime minister. Nick Clegg set out his plan in a letter to the Chancellor, George Osborne, in which he says such a move would create 46m shareholders and allow a form of collective ownership of the banks. This plan had been revealed to the Centre's steering committee earlier in the year.

Previous sell-offs of shares in state utilities attempted by the Thatcher administration were derided as gimmicks ('Sids') or short-term tax giveaways since most shares were either immediately sold on or resold to the big pension funds within two years.

Conservatives are likely to argue that denationalisation of the banks, brought into semi-public ownership in the years following the banking crash in 2007, should either be used to reduce the deficit, provide tax breaks or even restore public spending. In practice, the shares are not likely to be sold in the short term since the banks' share prices have not yet recovered, not even to break-even point.

Clegg said: "Psychologically it is immensely important that the British public feel they have not been overlooked or ignored. Their money has been used to the tune of billions and billions and billions to keep the British banking system on life support and they have absolutely no say at all in what happens when normality is restored."

The mass distribution of shares could mean that everyone on the electoral roll or on the national insurance register would receive an estimated 1,450 shares in RBS and 450 shares in Lloyds. Such parcels would be worth £770 on the basis of current share prices. The Treasury has not yet opposed such a plan, but might be critical if such a move meant undermining its plans to eradicate the deficit in this parliament.

Annual return reminder

All companies which operate employee share incentive arrangements in the UK (other than HMRC approved incentives), or which have directors or employees who simply acquire shares in the company, must complete an annual tax return, Form 42, by **July 6 2011**. Failure to meet the obligation may result in significant penalties.

RM employee shares almost in the post

Plans to privatise the **Royal Mail** under the Postal Services Bill are set to clear Parliament shortly. Postal Affairs Minister Edward Davey claimed the plans for mutualisation were radical and exciting, with the postal service being sold off and ten percent of shares going to staff. He promised a full public consultation on the final design of the employee share scheme as MPs considered amendments to the legislation made in the Lords. "I believe that a mutual Post Office is a radical and exciting proposal and one that is supported by all parties," Mr Davey said. "However I acknowledge that our position - that mutualisation must be a bottom-up process that engages sub-postmasters, customers and management - means that we cannot be as explicit now about what the mutual will look like. I am clear that when it comes to undertaking a sale of shares in Royal Mail the Government must have the flexibility to negotiate the right deal at the right time." He told MPs the Government would take on the Royal Mail's historic pension black hole from March 2012 as part of the preparations for the sale of the company. In order to protect the universal service, RM needed to be on a sustainable commercial footing and EU approval is being sought for state support. An Ofcom consultation will begin in autumn with the new framework in place by spring. Shadow business minister Nia Griffith said: "We remain totally opposed to the main purpose of the Bill which is to sell off the Royal Mail to private enterprise." The Communication Workers Union warned that the postal service faced an "uncertain future" once the legislation was approved.

Esop scheme at Dover Port

Dover Harbour Board (DHB) released a video to explain why it believes privatisation is the best way to secure the port's future. The You-Tube video features interviews with DHB chairman Roger Mountford, ceo Bob Goldfield and representatives from the British Ports Association, Road Haulage Association and local community. The film explains the background to, and nature of, DHB's privatisation scheme, including the Port of Dover Community Trust (PDCT) and an employee share ownership scheme, participation in which will be offered to all port employees. Goldfield said that he wanted to see employees hold onto their shares long-term in a privatised port company. DHB believes privatisation is necessary in order to develop a new terminal to meet expected traffic increases, because its trust port status prevents it from borrowing private capital. So the best way to build the new terminal would be via privatisation, the directors said. DHB recently launched a campaign to promote awareness of its PDCT programme, which would aim to give the local community a say in the future of the port, if it were privatised. The People's Port Trust has put forward a rival plan that would see the facility bought out by the local community for around £200m.

Centre seeks more trade union support

The Centre is renewing its efforts to gain trade union support for employee financial participation, announced chairman Malcolm Hurlston. "Although the European Economic and Social Committee comprises employer, employee and other representatives there is a gap in union support at both EU and UK level," he said in an interview.

The Centre would like to be able to bring reasoned union support from the UK to the EU summit on employee financial participation in Brussels in October and a number of positive talks are under way.

"In the past, esops have been seen only in the context of privatisation and a threat to membership," added Mr Hurlston. "The contrary is true: it provides a new way for unions to help their members as well as of understanding the role of equity in remuneration."

SAYE staff windfall at Asda

Almost 15,000 **Asda** employees will share £49m as an SAYE-Sharesave scheme matures. Staff who saved £50 a month over the three-year life of the scheme stand to receive more than £3,300 each, Asda said – a gain of more than £1,400 on their original investment. Employees who saved the maximum of £250 a month are due payouts of more than £16,000. The shares of Asda's US parent Walmart are trading above their price three years ago, once the 20 percent discount on the original option price is taken into account, meaning that members of the maturing scheme will choose to buy shares rather than opting to take cash. They can now immediately sell the shares to realise the gain. Asda said: "The Sharesave plan, created in 1982, was designed to give Asda colleagues a stake in the company and the chance to share in the success of the business." Sarah Dickins, an Asda director, said: "This is the third consecutive year that our colleagues have enjoyed a record Sharesave payout. With a 70 percent increase on the money they invested for this year's payout, I am delighted that so many of our colleagues are reaping the rewards of their hard work."

Tesco, the UK's biggest supermarket chain, which employs 233,000 people in the UK, is awarding store staff a 2.5 percent pay increase and a share of a £110m bonus pot. The pay rise is lower than the rate of inflation but higher than UK average earnings, which grew 1.8 percent in the year to April. Each employee participant will receive an estimated £500 bonus from the pot. UK ceo Richard Brasher said: "We continue to invest in our people because they are our most valuable asset." Tesco earlier announced a shake-up of executive pay, following a shareholder revolt at last year's AGM, when 47 percent of shareholders either voted against, or abstained, over boardroom pay deals (as set out in the remuneration report).

It has opted for a "simpler and clearer approach" to executive remuneration in advance of July's agm, in an attempt to make boardroom pay more transparent. It will overhaul the compensation strategy for senior managers following an "extensive review and consultation with shareholders". Under the new framework, four long-term incentive plans will be unified into one single plan, while performance will be judged against two rather than five measures – return on capital employed and earnings per share. The number of annual bonus performance measures has been reduced from more than 20 to seven, in a move Tesco said would "encourage a focus on profitably, growing the business in an efficient way."

Revolting shareholders

The remuneration report of oil explorer **Afren**, a FTSE 250 company, was voted down by 52 percent of its investors angered by the 35 percent salary and bonus increase handed out to its ceo Osman Shahenshah, bringing his total annual reward package up to $1.5m. Afren had based this award on its good share price performance, which was 84 percent up on the previous year and a spokesman said that its ceo's base salary was well below the average FTSE250 ceo upper quartile of c £700,000.

Baby, please don't go…

Despite being given a good kicking, metaphorically speaking, by investors at its May agm over allegedly over-generous senior executive rewards (see previous issue), bookie **William Hill** has done it again…by giving ceo Ralph Topping a retention share package worth £1.2m, to stop him from retiring. The one-off award of 553,000 shares at 217p vests in December 2013.

Richard Pennycook, fd at supermarket chain **Morrisons,** was gifted shares worth £1.25m as a sweetener to encourage him not to leave. The award, granted last March, vests in two years time, provided Pennycook remains a Morrisons employee and provided under-lying earnings per share meet or exceed the rise in the Retail Price Index (RPI) during the period ending April 2013.

Outgoing **Network Rail** boss Iain Coucher received a £1m plus 'golden goodbye' when he left the troubled firm. Details of his lavish payoff were revealed in the company's annual report, fuelling fresh outrage over public sector fat cats. Mr Coucher, 49, resigned from the rail infrastructure firm last October after three years as ceo, citing "personal reasons" for his departure. He received a year's salary in lieu of notice and a cash settlement relating to his Long-Term Incentive Plan (LTIP), plus pension and other benefits, according to Network Rail's annual report. Transport Secretary Philip Hammond said the package typified the profligacy allowed to flourish at the expense of the public purse under the last Labour government. "This payoff will stick in the gullet of every farepayer and taxpayer who think they pay too much to use our railway," added Mr Hammond. The report showed that four executives received more than £280,000 between them in the last financial year under the LTIP, ranging from £61,725 to £90,723. Network Rail received £3.7bn from taxpayers last year in a financial arrangement that regularly exposes its executive team to pay rows. In 2010, Coucher received a salary and bonus package worth £1.25m, drawing comment from Hammond, who questioned whether it was "appropriate" for Network Rail executives to share more than £2m in bonuses when the rest of the population was entering a period of austerity.

Employee owned companies' shares marginally underperform in Q1

Employee owned companies marginally under performed in the first quarter of 2011, dropping one percent compared to the FTSE All-Share, which was up 0.2 percent. In the long-term view however, employee owned companies continue to outperform FTSE All-Share companies, according to the UK Employee Ownership Index (EOI) published by Centre member law firm, **Field Fisher Waterhouse LLP** (FFW). The EOI, compiled by the firm's equity incentives team, monitors the share price performance of listed companies, comparing the performance of FTSE All-Share companies with companies that are at least ten percent owned by employees. The EOI started in 1992 and shows that despite the current drop in performance, over 18 years, employee owned companies have outperformed FTSE All-Share companies each year by on average 11 percent. During successive three-year periods they have outperformed Footsie by 37 percent and over successive five-year periods by 71 percent. An investment of £100 in the EOI in 1992 would at the end of March 2011 have been worth £861 whilst the same investment in the FTSE All-Share Index would be worth £250. Graeme Nuttall, head of the equity incentives team at FFW said: "Employee owned companies did not perform so well during the first quarter of 2011 but the index demonstrates that in the long term employee owned companies do better - they may show short term performance variability but prove to be more resilient over time. Long term, employee ownership as a business model is successful and this trend supports the Government's decision to promote employee led mutuals and employee ownership as a crucial part of public services reform."

Share schemes fact card

Employee share ownership specialist solicitors **Postlethwaite** has published its latest Share Schemes Fact Card update. It's a handy ready-reckoner, which compares the tax advantages, efficiency, conditions, reward value and user-friendliness of each of the UK Eso schemes. Readers wanting a copy, or seeking further info, should contact either Robert Postlethwaite at rmp@postlethwaite.com or David Reuben dgr@postlethwaite.com and Stephen Chater spc@postlethwaite.com One side of the Fact Card compares share schemes for key people, while the other focuses on all-employee schemes. "All arrangements involving trusts (or other third parties), or reserving assets for employees, need to be reviewed in light of the anti-avoidance provisions of the Finance Bill 2011," said Robert. Centre member Postlethwaite (Tel 020 7470 8805) is based in Covent Garden.

On the move

Claire Drummond has joined Centre member Jersey based **Bedell Trust**, as a manager in its fast-growing Employee Benefit Trust department. Claire is well known in EBT circles having spent the last ten years with Lloyds in its share plans department. She is responsible for the day-to-day management of Bedell's share plan and offshore registration teams, servicing an expanding portfolio of both publicly quoted and private companies.

Eso tax savings rise

Employees who participate in employee share schemes are set to make a tax saving of £870m this year, a 17 percent rise on the amount of tax saved last year, according to chartered accountants Hacker Young, which attributes the rise mainly to recovering share prices and plan maturity values.

Tax savings from employee share schemes

	2009/10	*2010/11*
Share incentive plan	£320m	£375m
Save As You Earn	£170m	£225m
Enterprise Management Incentives	£170m	£190m
Approved Company Share Option Plans	£85m	£70m
Total	**£745m**	**£870m**

Another one gone…

Anglo-Dutch group **Unilever** said it was shutting its final salary pension scheme, which has 5,200 members, because it had become "increasingly unaffordable and unsustainable". Unilever has begun consultations with staff and unions before transferring to the new plan next January. It closed its final-salary scheme to *new* entrants in 2008. Almost three-quarters of Unilever's 7,000 British employees are members of the scheme. The committee of Unilever pensioners said its members were "disgusted" with the company's decision. A quarter of FTSE 100 companies no longer offer their employees access to final salary schemes as the risk burden increasingly shifts towards individuals. Aviva, Asda, Wm Morrisons, Taylor Wimpey, Vodafone, Barlcays, Aviva, BMI and Dairy Crest have all recently closed their final salary schemes.

EVENTS

Cannes: July 7 & 8

It's your last chance to register for the Centre's 23rd annual conference in Cannes on Thursday July 7 and Friday July 8. To book a delegate place, either register online by accessing the Centre website: www.hurlstons. com/esop and click onto 'events,' or email organiser Fred Hackworth at: fhackworth@hurlstons.com Cheapish return flights to Nice are available from several London airports and thereafter take either an a/c express coach (Line 210) to Cannes direct from Nice Airport (T1 or 2), or a train to Cannes from Nice station. You can download the e-brochure, which lists all the speakers and their presentation topics, from the events section of the website. The brochure is co-sponsored by two Centre members - leading provider of offshore legal, fiduciary and administration services Appleby Global and by RBC Corporate Employee & Executive Services, a leading global provider of employee benefit plans and private equity and property fund administration. Delegates from practitioner firms (service providers) pay £995 if Centre members, or £1450 if not. Corporate plan issuer delegates pay only £599 if members, or £780 if not. These fees, which buy a two nights half-board accommodation + conference + cocktail party package deal, are not subject to VAT.

Guernsey: September 9

This year's ever-popular joint conference of the Esop Centre and STEP Guernsey (Society of Trust & Estate Practitioners) will take place on **Friday, September 9,** from 8:45 – 14:00 at the St Pierre Park Hotel. Tickets are on sale now at £295 for Esop/STEP members and £425 for non-members.

The disguised remuneration legislation included in the Finance Bill was not intended to catch normal employee share schemes and while recent amendments have mitigated the threat to some extent, the vastly increased complexity has created much confusion. Practitioners find HMRC guidance in places at odds with the legislation. Trustees should ensure they are well versed in all aspects to ensure they do not fall foul of the new rules. This extended half-day conference will ask: ***What now for EBTs and share schemes?*** and the programme tackles the key issues, namely: · Can EBTs continue to be central to Esops? · How will L-TIPs function under the new regime? · How will JSOPs be affected? · What constitutes 'earmarking' with regards trustees? · Could treasury or new issue shares the answer?

*Centre chairman, Malcolm Hurlston, will open the conference by giving an update on the Esop Centre and its activities. *William Franklin of Pett, Franklin & Co. LLP, who helped to create the JSOP, will make its position under the new legislation clear. *Juliet Halfhead of Deloitte will speak on other non-approved options and how they have been affected. *Recent relevant cases will be covered by STEP Guernsey chairman, Alison MacKrill of Carey Olsen, in her presentation giving a trust law update. *David Craddock will give concrete examples of the use of an EBT and how they can be used in different models of succession planning.

Breakfast will be served with registration from 8:45 – 9:15 and lunch will follow the conference from 13:00 – 14:00. To reserve your space email esop@hurlstons.com The event organiser is Centre national director Dave Poole and his co-ordinates are: dpoole@hurlstons.com , Tel: +44 (0)20 7239 4971 The conference is CPD accredited for 3.5 hours of professional development.

Davos: February 2 & 3 2012

A premier league list of speakers is being lined up for the Centre's next annual Global Employee Equity Forum, which takes place in the Steigenberger Belvedere Hotel in Davos Platz on Thursday February 2 and Friday February 3. Speaker slots reserved to date include: **Baker & McKenzie, Computershare, Credit Suisse, Henderson Global Investors, Macfarlanes, Minter Ellison, Pett, Franklin & Co. LLP** and **Strategic Remuneration.**

Only six speaker slots remain to be filled, so Centre members should get their skates on and reserve their slots and topics asap.

This two-day global employee equity forum highlights the latest developments in international employee equity plans – including a review of how key aspects of executive equity reward packages are being changed under regulatory pressures. Case studies about employee equity plans in action; plan administration techniques; corporate governance issues in the EU and USA; disguised remuneration, accounting standards; cross-border taxation, trustee updates and national spotlights will feature also in the programme. Delegates will get their chance to put forward their views during a 40-minute open debate about the key issues.

Package Deal Fees*: *No sales tax is payable on these fees*

Speakers:

Practitioners (service providers) **£ 745**
Equity plan issuers **£ 450**

Delegates: Centre members

Practitioners (service providers) **£ 899**
Equity plan issuers **£ 495**

Delegates: Non members

Practitioners (service providers) **£ 1350**
Equity plan issuers **£ 645**

All speakers and delegates are invited to the Centre's annual Davos cocktail party on the Thursday evening (partners & VFRs welcome) and there will be a pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. The programme includes extended afternoon breaks on Thursday and Friday, so that keen skiers can hit the slopes after the morning sessions. Packed lunches are supplied on demand.

If you would like to either speak at, or simply attend, the **Davos** conference, please contact organiser Fred Hackworth of the Esop Centre - email him asap at: fhackworth@hurlstons.com

Amending Prospectus Directive published

Centre legal member **Bird & Bird** reminds readers that an amending Directive has been published which will widen the exemptions from the production of a prospectus. EU member states have until July 1 2012 to enact the amended Directive. However, the UK Government says that it will implement some of the amendments this year in order to benefit small and medium-sized enterprises.

The amending Directive widens the following exemptions from the requirement to produce a prospectus:

- At present, no prospectus is required for an offer to fewer than 100 people per member state. The amending Directive increases this limit to 150 people per member state.
- At present, no prospectus is required for an offer worth less in total than €2.5m in any 12-month period. The amending Directive increases this limit to €5m.

UK ministers want these two measures (above) to come into force this summer.

In addition, the amending Directive changes the employee share schemes exemption so that:

- All companies which have their head office, or registered office, in the EU can benefit from the Eso schemes exemption; and
- Companies which have their head office, or registered office, outside the EU can benefit from the Eso schemes exemption if they have securities traded on a regulated market in the EU or they have securities traded on a market in a country outside the EU and certain other requirements are met.

IFRS maelstrom

Storm clouds gather over the heads of the international and domestic accounting standards boards over current financial reporting rules, which, many claim, permit finance houses to distort declared profit levels by hiding losses. Irish banks may be forced to declare millions of euros of extra losses under surprise plans by Ireland's authorities for the immediate overhaul of bank accounting regulations. The **Central Bank of Ireland** wants to force its banks to account for poor loans the way they used to under Irish GAAP and over-ride controversial International Financial Reporting Standards (IFRS). The move, which the central bank said it hoped to announce within weeks, would leave UK banks isolated in their application of IFRS. A similar overhaul in the UK would have a radical impact on the declared capital positions and profits of British banks. Experts have warned that banks in the UK and Ireland - both of which are governed by the Accounting Standards Board (ASB) - have implemented IFRS in a unique way. IFRS has been criticised for allowing banks to hide risks because potentially bad loans do not appear on the balance sheet until default occurs. In addition, the rules, introduced in 2005, allow banks to spread losses across several years rather than recognise them immediately. Ireland's central bank is determined to clean up the banks' balance sheets in a bid to restore confidence to the shattered sector. The central bank believes that bringing in transparency is vital ahead of the €24bn bank re-capitalisation programme. Two MPs wrote to the Royal Bank of Scotland to demand an explanation of the bank's accounting methods, which they claim may be distorting its capital position by as much as £25bn. David Davis, the former Tory front bencher, and Steve Baker, MP for Wycombe, have called for RBS to prove that its accounts are not being distorted by the IFRS rules application. The MPs argued that IFRS, which has been described as a 'fatally flawed' system, is inflating the profits and capital position of RBS and other banks. The MPs said that while RBS's accounts stated that the bank had £32bn in losses, the Government's asset protection scheme accounts show an expected loss of £57bn from its toxic assets alone. Written by Gordon Kerr, a banking expert, the letter claims that the distortion in the accounts could be equivalent to as much as 50 percent of RBS's core tier one capital. It says: "That means on a prudent basis RBS has a basic capital ratio (leverage on total assets) of 2.75 percent rather than 5.5 percent as stated." The MPs claim that the rules are at fault but also that RBS has applied them more extensively than other European banks. Mr Baker launched a Private Members Bill intended to make banks file accounts using the old UK GAAP standards, as well as IFRS, to force them to account for poor loans as well as failed ones. At the meeting, RBS's representatives disagreed with the MPs' assessment and said: "RBS is fully compliant with IFRS accounting standards."

The Centre repeatedly criticised IFRS 2, which can make life difficult for sponsoring companies who have to account up front for 'early leavers' and other events in SAYE-Sharesave schemes.

The parliamentary dispute came ahead of the Government's response to a report by the House of Lords' Economic Affairs Committee, which was highly critical of the IFRS system. Billions of pounds of banker bonuses may have been paid out 'by mistake' as a result of miscalculations thrown up by the allegedly flawed accounting rules, the Committee was told earlier this year. This was alleged by some of Britain's biggest institutional investors. Iain Richards, of Aviva Investors, told the Lords that the IFRS system of auditing the banks had had "a material cost to the taxpayer and to shareholders" because "as a result, dividend distributions have been made and bonuses have been paid that were imprudent". He added: "The IFRS (system) is extremely pro-cyclical; it facilitated and exacerbated the credit bubble...There were some very clear risks inherent (in the banks)...the risks were extremely material." His view was backed by other fund managers giving evidence to the Lords, including David Pitt-Watson of Hermes; Guy Jubb of Standard Life Investments and Robert Talbut of Royal London Asset Management. Pitt-Watson told the Lords that "We as investors and society need to see the re-introduction of more principle-based accounting system that included prudential and on-going assessments of risks. The rules-based IFRS system has been criticised for not identifying bad loans until they fail. He said that the lesson of the crisis was that rules encourage people to go round them." Tim Bush, the City veteran, warned that IFRS amounted to a regulatory fiasco that had contributed to the crisis and still posed a danger to the system now.

Could all this turmoil lead to a u-turn on IFRS2, which is applied to employee share schemes? William Franklin of Centre member Pett Franklin & Co. LLP, for one, hopes so. He said: "A re-think on IFRS2 is really needed and is overdue, but it seems unlikely. There is a growing list of practical problems with the Standard that have been presented to the IASB over the last few years (eg the distinction between cash settled and equity settled share based payments) but the IASB has shown a marked reluctance to engage properly with these points even when they have been raised by their own staff," added Mr Franklin.

*Last April some banks were accused of flattering their profits by spreading out the effect of the Treasury's bonus tax over several years, instead of accounting for the full tax charge and the bonuses in the year they were incurred/awarded.

Reward rage

News that 1800 **Met Office** staff were awarded bonuses averaging £800 each provoked anger and bewilderment. Regular users of the Met Office's forecasts might wonder how the reward is related to performance, but staff there are set to share a bonus pot of around £1.5m. The weather service, which is part of the Ministry of Defence, confirmed that its 1,800 employees are in line for the pay-out after it met or exceeded all of its targets. This same Met Office failed to warn the public that the coldest December in 100 years was on the way and annoyed thousands of Royal Wedding spectators by predicting rainstroms for what turned out to be a hot sunny day. The MO had withdrawn its long-range forecasts following its inaccurate prediction of a barbecue summer in 2009. Other weather forecasting companies, like Positive Weather Solutions , said that the bonuses were a "disgrace."

MO ceo John Hirst was awarded an annual performance bonus of £50,000 last year, taking his total pay to £225,000, which is £80,000 more than earned by the Prime Minister. Chief scientist Julia Slingo saw her bonus rise to £25,000, with her total package worth £170,000. A Met Office spokesman said: "In line with many other Government agencies and departments, the MO is obliged to accept a greater proportion of its total remuneration as performance-related pay. Each year this performance-related pay is at risk and has to be earned by the organisation meeting agreed performance targets."

Angry members of **NFU Mutual** took the insurer's top brass to task over executive pay. The rural insurer saw underwriting losses mushroom last year while profits fell sharply. Customer premiums have risen steeply in response. However, ceo Lindsay Sinclair pocketed a £410,487 bonus for 2010, plus a £219,709 three-year bonus. This took his total pay to £1.17m - a 155 per cent increase. Bonuses and executive pay dominated NFU's stormy agm in Stratford-upon-Avon, Warwickshire. Member Roger Martin challenged the bonuses, saying: "It is a very poor scheme that pays out a lot when performance has been worse than in the previous year." As well as Sinclair's bumper reward package, members were unhappy at overall boardroom pay. The nine non-executive directors took home fees of £365,285, up from £333,561. The basic fee for a director leapt from £33,250 to £37,000 - an 11.2 percent rise. Richard Percy, chairman of the remuneration committee, defended the pay structure as being: "entirely in proportion to the market," but members disagreed. Richard Smith, 66, who runs a plant nursery in Atherstone, Warwickshire, said: "This is a mutual and should operate on mutual values. Directors should be prepared to accept less when policyholders are facing hard times." He challenged the board to take a voluntary reduction in pay, but was met with a flat 'No' from chairman Sir Don Curry. NFU Mutual comfortably won the vote on executive pay, with 97 per cent of votes cast by post or online backing the board. The board faced accusations of double standards from former employees angry over the way NFU Mutual is managing its final salary pension scheme. For the past three years pensioners have seen below-inflation rises in their pension, as increases are at the discretion of NFU Mutual. Liz Langstaff, who retired in 1995 after 36 years with the insurer, said: "I've taken a cut in my standard of living this year, while we've seen enormous rises for the board. Why is there such a difference in the way you treat your pensioners and the way you treat yourselves?'"

MPs and consumer groups expressed irritation after Ignacio Galan, chairman of **Scottish Power**, saw his pay package doubled to £10.5m just months before the company raised gas bills by 19 percent and electricity bills by ten percent to 2.4m British households. Galan received £6m in shares for having successfully re-structured the company within three years. Iberdrola, which owns Scottish Power, said that Galan's new reward package reflected his position at the head of an international group operating in 40 countries, SP accounting for only 20 percent of overall turnover.

Advertising giant **WPP**'s management received a stinging rebuke from investors, with 42 percent of shareholders voting against the company's remuneration report. Shareholder activists objected to the fact that Mark Read, the head of WPP Digital, received a pay rise of 31 percent – up to £425,000 - in January. Some corporate governance bodies argued that Mr Read's salary increase was unfair. However, sources said he received a pay rise because his salary was deemed uncompetitive in the marketplace. In 2010, Read received a remuneration package totalling £872,000, including a £219,000 bonus. The Association of British Insurers had issued an 'amber-top' warning about excessive pay rises and bonuses for Read and fd Paul Richardson. Shareholder advisory group Pirc urged investors to vote against the remuneration report, raising serious concerns about potential excess. Objections are understood to have come from US proxy adviser Institutional Shareholders Services. WPP ceo Sir Martin Sorrell's basic salary remained at £1m, but his total package rose by more than 70 percent to £4.5m in 2010.

Irish blues

The Irish government is to initiate a formal review of the practice of stitching in lucrative 'packages' with bonus payments into the contracts of semi-state sector chiefs salaries and how the awards are assessed, according to the minister for public expenditure and reform Brendan Howlin. This follows an announcement that ceos of Irish para-statal corporations are expected to take a 15 percent pay cut. A raft of remuneration committees is now adjudicating awards for the 2010 annual accounts and moral pressure alone may not be enough to change practices. The move on top level pay signalled that everybody needed to contribute to recovery ''and that it's done in a fair way'' to avoid the strife that erupted as a result of the Greek bailout experience, Howlin said. ''We want to preserve the social solidarity that has been manifest in this process to date and not to have the discordant situation that you have in Greece, where people resist change that I'm afraid is inevitable. *Rubber-stamping of performance-related pay has to stop.* "Performance-related pay was considered by government, and contractually it is part of many people's legal situations that can't be immediately disturbed. But I've been asked to look at that because, in the past, some performance related pay was taken as a rubber stamp by the board as an intrinsic part of pay." He believes that companies in the future should be required to make a case for special awards, which would be linked to "clearly defined goals that must be achieved and validated by a process". It remains unclear whether an independent assessment or the company's own remuneration committee will be used for this verification process. "The review will be to see how that can be done," Howlin said. "I don't want to see ways of getting around the new pay norms that I've set, where people talk about a package which is suddenly different." *Cabinet ministers have already written to Irish state company boards instructing them not to pay bonuses in the current climate*. "I would hope that this would be fully complied with, but separately, the principle is being dealt with by this department." Howlin has been told that many state organisation chiefs will take the voluntary pay cut and he expects others who are linked to the public sector to be contacted in the coming days. He expects incumbent ceos to take the 15 percent cut if they're above the annual salary threshold of €250,000.

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