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it's our business

newspad of the Employee Share Ownership Centre

Eso mitigates cost of living crisis, Rome meeting told

The wider and more intensive use of employee share ownership would help mitigate the cost of living crisis within the UK and the EU generally, more than 40 delegates were told at the Centre's 26th annual conference in Rome.

"We need to respond – prices have gone up, but average pay has hardly moved," **Alan Judes** of **Strategic Remuneration** told delegates. "The use of broad based employee share ownership (Eso) allows flexibility in pay arrangements, which helps preserve jobs when profits come under pressure. It is still a very tough environment out there, despite record low European interest rates, so cash-strained companies needed share plans designed for them.

"Most companies cannot afford to pay their employees more in cash, because if they did so it would affect cash flow and add on the costs of NICs, pensions and other benefits dependent on salary rates. Instead, companies can pay in the form of shares, because equity pay can be designed to give corporate tax deductions, no income tax or NICs and no cash flow out of the business. If profits go down, pay-outs from Eso awards could be cut back too, thus avoiding the need, in some cases, for redundancies," added Mr Judes.

This message, from Alan's joint presentation with **William Franklin,** of Eso lawyers **Pett, Franklin & Co. LLP,** was brought home days later by publication of official UK statistics, showing that weekly earnings rose by just 0.7 percent in the three months to April, substantially below retail price inflation, which hit 1.8 percent in April. Latest government statistics showed that UK average earnings were 1.7 percent *lower* in April than in the same month last year. Total pay growth in February-April fell to just 0.7 percent, from 1.9 percent in January-March. Hence average pay rises (*if any*) are lagging way behind price inflation. Furthermore, employees in thousands of businesses throughout the EU's Mediterranean belt, not to mention state employees too, have not had any basic pay rises for three years.

Three other key themes - the impact of consolidation on share plan issuers; employee share ownership in former state enterprises; and the regulatory tide worldwide - were much discussed during the Centre's two-day event, co-sponsored by ***Equiniti,**** which took place at the *Residenza Di Ripetta Hotel* in the heart of Rome.

Conference chairman **Malcolm Hurlston CBE** warned delegates that broad based employee equity plans were now so common in multinational companies that they were in danger of being perceived as a corporate fashion accessory: the attitude of some was: '*You've got one, so I'd better have one too,*' he explained.

"A lot of our work these days goes into trying to freshen up the image of all-employee share schemes, which do not deserve to be tarred with the same brush as the still festering sore of executive equity bonuses," said the Centre chairman.

Perhaps the Centre's biggest achievement during the year had been helping to ensure the trade unions did not actively oppose Eso during the part privatisation of Royal Mail (RM). Collectively, more than 140,000 postal employees had received ten percent of the total equity in the form of free shares and 15,000 had gone a stage further by *buying* shares in RM via a priority offer. "We are working on plans for these new employee shareholders to collectivise their voting rights through the unions and the success of the Royal Mail offer could prove to be the turning point for a wave of new privatisations," Mr Hurlston added.

Although the Centre had been "thrilled" by Chancellor George Osborne's decision to double the employee monthly investment limit in SAYE-Sharesave and to raise the limit in the Share Incentive Plan too, more needed to be done to popularise the Company Share Option Plan (CSOP). The CSOP was "The one mechanism which ensures that shares (initially options) get into the hands of

From the Chairman

Shareholders in Sports Direct who are opposing Mike Ashley's reward remind me of people who bought houses under a flight path and complain about aircraft noise. I like Mike Ashley because he has truly spread the wages of capital (which is what we are all about) and because he does things his way. The more shareholders waste his time, the more the company will perform like any other. Let's have more Ashleys and fewer whingers. (I am also a shareholder, but not big enough to make a difference.)

Malcolm Hurlston CBE

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lower-paid and part-time employees," said Mr Hurlston. Moreover, companies could better support Eso by publicising their own broad based schemes in the main body of their annual reports and not just in a dusty accounting footnote which hardly anyone would read. Was this not part of the corporate responsibility agenda, he asked? Another initiative in which the Centre was involved was the new Eso index of companies having at least three percent of their equity in employee hands. This index, devised by Capital Strategies and assisted by the FTSE, was being published quarterly and was already showing a clear correlation between share price rises and the degree of Eso participation in the company concerned. It would make companies who said that installing Eso was too expensive think again, added Mr Hurlston.

Meanwhile, on the European front, the Centre was happy to be the Commission's UK partner of choice in a major new project about the social economy, in particular the development of more mixed ownership entities – especially by employee shareholding - in the education, health and social services fields. Crisis-hit EU governments felt forced to unload more and more former state-owned enterprises to reduce costs, so a key aim was to ensure that employees collectively were given a meaningful role in the future direction of these new 'mutual' businesses.

Lesley McFee of **Pearson** and **John Daughtrey** of **Equiniti Employee Services** gave a joint presentation about the all-employee and discretionary share plans used by global information and learning company Pearson, which has some 40,000 employees in 80 countries to look after. Lesley explained that Pearson tracks its employees through its various share plans, as it doesn't have a single database for worldwide comms. The company operates an all-employee 'WorldWide Save For Shares' (WWSFS) plan, a US employee stock purchase plan (ESPP), and Long-Term Incentive Plans (LTIPs) - comprising restricted shares only - for executives and managers.

The LTIP uses a combination of three performance measures - Return On Invested Capital, Total Shareholder Return and Earnings Per Share. Senior executives are subject to three year performance and two year mandatory deferral periods, while other executive and management tiers are subject to annual awards vesting over three years.

The WWSFS is based on a UK Sharesave scheme, launched 35 years ago and global for the last 16 years. It reaches into more than 90 countries with documentation translated into 14 languages. Options are issued at a 20 percent discount, attracting 20 percent plus take-up rate. Equiniti helps Pearson administer this global plan.

The US ESPP is a six-month rolling savings plan, offering a 15 percent discount on market value and a take-up of more than 25 percent.

Lesley said that Pearson had five key vendors in the share schemes field. She outlined the company's five year Request For Proposal (RFP) tender process, which employs a weighted scorecard drawing on background checks, client references, cost evaluations and independent expert advice. "No decision is based on cost alone, it's just a negotiator," she said. Pearson's RFP assessment process gave service providers in the Rome audience a fascinating glimpse of what goes down well in such pitches and what does not.

Lesley described the WWSFS launch, stressing the importance of stand out communications that are tailored to local audiences but underpinned by a common corporate brand. She also highlighted the importance of the new £500 monthly savings limit, the use of country specific tax summary booklets, and an amended retirement policy that enables all new Pearson acquisitions to participate. The currency FX exchange rate is fixed at the launch of the plan. "All our plans maturing this year are in the money," she added. No wonder Pearson recently won the Centre's 2013 award for *Best Share Plan Communications*.

John outlined the plan's new portal, designed with Equiniti's assistance, which offers a single sign-on process and has been translated into 15 languages. Pearson has also developed a local payroll co-ordinators' database and a separate executive portal. A Global Nominee was being established to permit real time dealing worldwide he added.

Claudia Yañez of **SunPower Corporation (US)** offered a fascinating insight into the complex employee equity decision-making process at her Texas based company, which is two-thirds owned by the oil & gas giant **Total**. SunPower to date has installed almost 13m solar panels globally. France's tax and regulatory environment has imposed major barriers in the way of Sunpower employees seeking to participate in the company's share plan. "Two of our remuneration committee members are from Total, which has its own very different employee equity plans, so I experienced quite a culture shock when I joined SunPower," said Claudia. SunPower, which employs more than 6,000 people in 20 countries, needed a major new employee equity plan because the current plan expires next year, but fortunately her ceo was very pro employee equity, she added. Regulatory problems, particularly in France, were a big problem for a mid-sized company like SunPower. The decision-making process involved many stakeholders – the HR, legal, finance and tax departments; local executives; board and committee members; and the shareholders. For senior execs, the company used restricted stock performance based awards but, prior to Claudia's arrival, had been criticised for having awards based on just one year's performance. "We are now thinking of changing this to a minimum term of two years with some three year awards," she said. An employee stock purchase plan was another possibility. Since Claudia joined, the stock price had risen by about 400 percent, which meant that she had had to slash the number of shares offered to employees. "It's a challenge because we are already in 20 countries and still expanding, though at present we have only a small number of employee equity plans," she added.

Ceri Ross of **Ernst & Young LLP** discussed the just published EY global share plan survey 2014. The survey revealed the major challenges that companies were facing, including: tax authorities' increased focus on deferred and equity compensation; increased payroll compliance re compensation for cross-border mobile employees; increasing equity programme administration; and the risks of getting it wrong, including fines and reputational risk. Ceri said there had been a marked increase in the perception by companies that *executive* global share plans were a performance motivation tool, but this was still not as important as aligning employees' interests with the company or in aiding key staff retention. By contrast, *all-employee global share plans* are offered to promote corporate identity and to encourage employee share ownership. On the executive plan front, many companies were moving away from issuing options towards restricted shares, she said. Around 30 percent had changed their performance conditions during the past year. The Americas were the most relaxed regarding meeting conditions attached to performance awards, this year's survey showed. Global executive plans in Asia and in Europe were twice as likely to have claw back arrangements and holding periods than the Americas.

Plan take-up levels were highest in Asia-Pacific, but overall participation rates out there hid the fact that some Asian countries and workforces were highly enthusiastic about employee share schemes while others did not seem to want them at all, she added. Service providers will be relieved that regular communication with workforces did marginally add to participation levels but paper communication no longer cuts any ice, while translations and electronic communications encourage higher take-up. Regulatory reforms and toughened tax compliance would continue to impact the design and implementation of global share plans, which in turn would continue to play a major role in the attraction, retention and motivation of talent worldwide.

"Our survey revealed a general trend in which companies are reaching out to their widely scattered employees by using plans which have a more global approach, rather than using home-based plans with limited bolt-ons," Ceri added.

Leslie Moss, founding partner of the new company **HR Partners,** said that in the executive sector, total target remuneration rose two percent in 2013 and a typical split was now 33 percent salary, 27 percent bonus and 40 percent long-term incentives + benefits. Around 30 percent of FTSE 100 companies had frozen executive salaries last year, while average bonuses were down compared with 2012 (but still 65 percent of the maximum allowed by their schemes). No wonder there had been no *Shareholder Spring* last year, though there has been more trouble at agms this year.

Some companies had moved towards five year vesting periods for performance awards after whispers that three years was not quite enough, said Leslie. Though some people complained loudly about ceo salaries, little was said about the reward of middle and senior managers who, typically, got about only 12 percent of their ceo's salary annually. The Business Secretary's Remuneration Report - which requires shareholders to be notified annually about: changes in directors' reward during the year; company *future* policy on directors' pay; and how the current pay policy was applied during the year being reported on – had allowed many remuneration advisers to take Caribbean holidays, joked Mr Moss. What was especially new was the binding shareholder vote at least every three years on future executive pay policy. If that vote failed then the existing policy would continue, as any payment outside the policy would be *ultra vires.* Now shareholders could see in the annual report the relative importance of spend on directors' pay compared to dividends and employee pay in general.

Interestingly, the level of bonus rises paid out in FTSE 100 companies had failed to match the rise in their share prices, he said. One of Leslie's many informative executive reward charts showed that in two-thirds of the companies where performance had fallen, the bonuses went down too, which nevertheless left the question hanging as to why the bonuses hadn't also fallen in the other third of under-performing companies?

On the issue of whether executive pay was excessive, **Malcolm Hurlston** said that the Federal Reserve speaker at the Centre's New York seminar had made three key points: companies were now much bigger than previously, meaning ceo responsibilities were greater; ceos didn't last long anyway; and thirdly, there was correlation between ceo reward and innovation in companies.

Marco Cilento from Italy's second largest trade union, **CISL**, said that the real (post inflation) wages of most European rank-and-file employees were either not increasing or barely rising, and certainly less than productivity increases. "Yes, there is a cost of living crisis and people aren't coping. What does the top management do with all this money anyway? It's an unproductive use of resources to give them so much."

William Franklin said he doubted whether the companies paying out the most were the most innovative. "Big companies are sub-contracting innovation these days – they buy in the ideas."

Patrick Neave of the **Association of British Insurers** said that the ABI was actively involved behind the scenes in executive remuneration consultation and had taken a "robust line in ensuring that companies are compliant with the new regulations and with best practice."

The ABI, and the Investment Management Association (IMA), the trade body for the £5 trillion UK asset management industry, had announced the merger between the IMA and the Investment Affairs division of the ABI as from June 30 this year. Accordingly, the IMA would change its name to The Investment Association with effect from the beginning of 2015.

Of 294 quoted UK companies whose remuneration plans had been examined in depth by the Institutional Voting Information Service, which is part of the ABI, eight percent of them were given the red light (or bottle top), meaning that the City institutions should consider voting them down at the agm unless these plans were revised, said Patrick. A further 45 percent were given 'amber' status – i.e. remuneration plans containing a few unacceptable elements. "These numbers demonstrate that the ABI is being much more critical about executive remuneration plans than before."

A key theme in the ABI's remuneration guidelines was the requirement that all senior executives should hold substantial shareholdings in their own companies - they had to have "skin in the game," added Patrick.

The new binding vote on forward looking remuneration policy was all very well, but there was a lack of detail about what constituted 'acceptable disclosures.' Furthermore, did the remuneration committee have wide

-ranging discretion to make separate pay awards outside the policy report? Most companies so far had avoided stating their maximum directors' salary base but "[w]e would say that this should be part of their general positioning," said Patrick. The ABI was trying to improve corporate governance and shareholder engagement and its watchword there was "comply or explain." It was liaising with the department for Business, Innovation and Skills and Business Secretary Vince Cable had won some Brownie points by trying to defend the principles based executive reward monitoring system evolved by the ABI, he added.

During an open **executive remuneration** session, Mr Moss argued that having 'handcuffs' on executive reward schemes - forfeiture of awards if you leave early - impeded the flow of economic change and in that sense *Golden Hellos* were understandable and even necessary, otherwise no executive could leave his or her position until their incentive share/option awards had matured.

Professor Tiziano Treu, former **Italian Employment Minister** and **Senator**, discussed the re-launch of employee equity in Italy. "Our case is quite different to that of the UK/US because although we have very good grounds for installing Eso, there are many obstacles in Italy to employee financial participation (EFP) generally." There was resistance to the concept, which had uncertain legal status; employees were risk averse; the trade unions were divided about its merits; and there were cultural problems too. The majority of small companies had less than ten employees and they tended to be under-capitalised family businesses. "These obstacles account for the slow growth of EFP in Italy. It used to be confined to large private companies and state controlled companies, but most of the latter have now gone."

There was, however, considerable EFP in worker co-operatives, such as Banco Popolare di Milano, where most employees are members and possess a controlling interest (organised by the unions) in the annual assembly plus a major role in the bank's governing body. Associations of employee shareholders could collect participants' proxy votes so that their views could be expressed collectively, said Prof Treu.

A recent reliable survey suggested that the level of EFP in the Italian workforce had risen from three to 4.5 percent between 1990 and 2010 The continuing crisis had been a driver, as many companies had little or no money for pay rises and so they could use EFP, as well as welfare benefits, as a negotiating tool with the unions, he explained.

The new Renzi government had endorsed EFP as the way forward in the future privatisation of several state-owned companies, and in March this year a parliamentary Bill had been presented by Centre-Right MPs, the first case of bi-partisan endorsement of employee share ownership said Prof Treu. However, the task of getting EFP installed in the SME sector on a widespread basis remained very difficult.

He then discussed some Italian EFP case histories, including the opticians chain Luxottica, in which €7.5m worth of free shares were distributed to employees in proportion to their seniority, up to the legal maximum value of €2,065 per person with a three year lock-in period. At Banca Intesa, after agreement with the unions, up to €920 worth of free shares were distributed to employees who, if they invest their shares in the company plan, receive extra free shares. Capital invested by employees in this way was guaranteed, no matter what happened to the share price. This example was being copied by other Italian banks, said Prof Treu. At Telecom Italia all permanent employees were offered shares at ten percent less than their market value and the maximum individual investment in this plan was €3,000 per head. Employees could take out a company loan to help buy its shares. A year later, each participating employee received one free share for every one bought previously.

During delegate questions, Prof Treu said that although trusts – e.g. EBTs – did not exist in Italy, he and some colleagues were now thinking: *why shouldn't we use trusts too in Italian EFP plans, we are all in a global world now?*

Martin Osborne-Shaw, of **Equiniti Premier Services,** assembled a panel of Equiniti clients in order to discuss different ways of administering all-employee share plans. **Kay Ballard** of **Kingfisher**, Europe's largest home improvement retailer, told delegates that some of the group's executive plans were so complex that they could not be out-sourced. "One of our executive schemes involved approved options underpinned by unapproved options and I ended up as the only person who could understand it," Kay recalled. The process was manual and behind the scenes and covered 800 senior people. When Kingfisher did use service providers, it did not put all its eggs in one basket – it used, according to circumstances, Equiniti, Computershare and Capita.

Rachel Benjamin of **Premier Oil** told how her company had moved from self-plan administration to out-sourcing recently. A special online portal had been installed, enabling executives to see all their equity plans and corporate nominee accounts instantaneously.

Lesley McFee of **Pearson** said that her group preferred to out-source their discretionary plans management. This allowed Pearson to focus on the awareness of its employees regarding the advantages of equity plans, she said. "There is no point in making equity awards until employees are educated as to their purpose," explained Lesley.

The panel experiences had shown that companies were not the same and that there was no one-size-fits-all in terms of employee equity services, said Martin.

Alan Judes (*see earlier references)* said that **Next** chairman Lord Wolfson had handed over his £4m equity bonus to the workforce, giving them an extra £200 each – which was one way of plugging the pay gap. "In the last three years, thanks to everybody's hard work, Next has grown its profits per share by 65 percent and the company's shares have trebled. As a result, my share matching bonus has become more valuable than I could possibly have hoped," the peer had explained.

William Franklin said that he could not believe how generous the tax incentives now are for the UK Share Incentive Plan (SIP). "If you tried to deliver the same value as a SIP does to employees in cash, it would cost the company twice as much," William explained. "SIPS are quite widely used in large quoted companies, but the take-up has been rather disappointing in SMEs. We need to be able to offer more tax incentives to owner-managed businesses for them to want to install employee equity." The new Employee Ownership Trusts would encourage some of them to use employee equity, he forecast. Businesses could thereby sell 51 percent of their equity to the employee trust and hold on to 49 percent tax free.

David Ellis of **KPMG** kicked off the second day by asking how a business could demonstrate that using all-employee share plans gave good value for money in today's straitened times. People spend was the single largest cost in most businesses and discretionary spend on people tended to get hit first in a cost-cutting environment. Usually, that meant cutting back the payroll. How could the all-employee share plan justify its existence when, as David argued, it was difficult to prove that Eso had any significant impact on productivity? David had asked ten FTSE 100 reward directors why their companies used Eso and their responses typically pointed to: efficiency as a method of remuneration; strengthening corporate glue; and contributing to a more competitive total reward position.

How did these reward directors *know* that Eso did do the things it said on the tin, he asked? "The evidence suggests lean pickings, though it is possible to prove that where Eso is very significant, say more than 50 percent employee owned, you can deliver all these benefits."

Companies needed a reward strategy and they needed relevant data - from the mass of data already available to companies - to prove the Eso case. The challenge was to use the data in a way which presented a holistic view of the workforce, beyond basic cost assessment, to show direct connections between customer, operational and financial performance indicators and key workforce indicators. KPMG had used big banks in one such modelling exercise because they wanted to define success beyond cash returns and profitability. Customer experience was vital because they didn't want to be accused of mis-selling, David said. This modelling had shown that the best-performing bank branches were those with long-serving managers and a high proportion of part-time employees, findings which had astonished the banks. Concluding his talk, David noted that "[i]f you have 36 pages of your annual report on executive reward, then to add a few extra pages on your all-employee share schemes is a good idea."

Dr Marco Cilento, of the **European Trade Union Confederation** and the **Confederazione Italiana Sindacati Lavoratori (CISL)** talked about the attitudes of Italian trade unions towards Employee Financial Participation. His union was working closely with the Esop Centre on projects to increase the use of EFP in Europe. CISL believed in the close involvement of employees in equity distribution and in performance plans too. This was all part of the tendency of unions to offer services to employee members, which the state could no longer provide, explained Marco. However, not all Italian unions shared the same perspective. For the benefit of employees, the rules and incentives surrounding EFP had to be simplified. "The number of general employees who understand financial instruments is close to zero," said Marco. "For example, many invest part of their wages in pension schemes, but they have no idea of how much they will be likely to get back when they retire." In France, EFP was well known, with 3.7m employee shareholders, representing 51 percent of the private sector workforce, but in Germany trade unions were sceptical and the redistributive nature of EFP was not perceived.

Government backing had helped set up the first comprehensive legal framework for employee equity awards in innovative start-up companies, said Marco. Major regulatory exemptions and tax reliefs were available to young high-tech companies that signed up to the new legal status and satisfied various criteria. To qualify a company must be: less than four years old; have more than 50 percent of its equity capital owned by individuals; earn less than €5m a year in turnover; offer zero profit distribution (dividends) for four years; and devote 30 percent of its budget to R&D. The enabling statute accepted performance based reward - offering stock options or free shares - and targets based on individual contracts or determined by collective agreements. Marco had intended to discuss the proposed introduction of EFP into Poste Italiane, but the details had yet to be defined. The original plan, still under discussion, had been to put a maximum 40 percent of Post Italiane onto the market, with a guaranteed maximum four percent allocation of free shares to the workforce.

Nicholas Greenacre of **White & Case LLP** examined the sulphurous issue of whether the employee equity industry was already over-regulated and whether, if so, anything useful could be done about it. Increased regulation was most evident in the executive equity arena, but even there it was "not overwhelming," said Nicholas. "There is no lack of confidence among equity plan promoters and employers will not be stopped by a few *local difficulties*."

The *cause celebre* of the moment was the annoyance of senior officials in the European Commission over the way UK based banks were using 'fixed pay allowances' as a way of evading the executive bonus cap, he said. Would the European Parliament rescind the bonus cap and how would the UK's European Court of Justice challenge to the bonus cap work out, he asked? The executive bonus cap would make UK based finance companies less able to compete for international talent, said Nicholas, but this was disputed by Prof Treu who said: "There is no war for talent."

One thing was sure: fixed basic pay, especially in the banks, would have to rise, despite the inevitable consequence of a fall in the proportion of flexible pay and thus less ability to claw back bonus payments. "Be careful what you wish for," Nicholas said.

There was a new EC proposal to reform the EU's data protection law through draft regulation, so that employee consent could no longer be assumed, but would have to be explicit. There was "a new world out there" in light of the oncoming US Foreign Account Tax Compliance Act (FATCA) and Tax Reporting rules, which would impact on trusts too, he said. "These requirements were not designed to interfere with Eso, but happened to catch them." Yes, there would be increased costs and extra admin in implementing the new requirements, but Nicholas did not believe that regulatory developments

would threaten the prospects of the employee equity industry.
Mike Baker of **Solium** said that the amount of recent regulation which impacted on employee equity would make a lot of companies stop and think: *why are we doing Eso schemes?* This view was backed by **Rachel Benjamin** who warned that some companies might just use cash to incentivise their staff from now on. **Kay Ballard** said: “What we find most irksome is keeping abreast of changes in the regulations and so the costs build up quite a lot every year.”
David Craddock of his eponymous consultancy services company tackled the role of employee share ownership in market economics, arguing that Eso should rise to a centre stage position as a macroeconomic variable. David cited approvingly Prof Martin Weitzmann, who asserted in the 1980s that wider employee share ownership implies that all involved in the business will have fluctuating incomes during any given trade cycle. Weitzmann believed that profit-related bonuses would boost economic growth and employment. “Eso facilitates flexible wage costs, which means less pressure on managements to order redundancies and obviates the need for extreme monetary and fiscal measures and avoids fuelling price inflation,” said David. Eso was sometimes mistakenly linked solely to reward, but the key concern should be productivity, he added. The European Commission in particular should be encouraged to promote Eso more actively, though each member state should be allowed to fine-tune its preferred versions. Eso was a flexible tool relevant to many business challenges, including: productivity increases; management buy-outs; business rescues; capital restructuring; and fairness in executive reward, concluded David.
Sara Cohen of **Lewis Silkin LLP** discussed the new **Employee Ownership Trust (EOT)** which was aimed at helping to develop more employee ownership in the unquoted, privately-held UK company sector. Sara described the John Lewis ‘employee ownership’ model which, although it boasts the earliest UK employee benefit trust, does not actually award shares to its employees. She explained that the EOT trustees must hold more than 50 percent of the share capital and have majority voting power on key company development issues. It is designed to benefit all eligible employees, except for those holding more than five percent of the share capital. The tax advantages of the EOT *in certain circumstances* were considerable – no Capital Gains Tax to pay and Income Tax relief for total bonus payments of up to £3,600 a year per employee. The requirement to transfer 51 percent of the company + control to the EOT gave employees security. It was useful, said Sara, that most existing EBTs could be deemed as being EOTs under the new legislation. However, companies would be well advised to have professional trustees on board because the EOT rules were complex.
Sara asked: “Will being under the control of the trust inhibit the growth of the company? I think the all-employee requirement is too restrictive and there is a risk that a greedy company owner could use the EOT to maximise his gain without paying any CGT. Having said that, I think the EOT will appeal to some owner-managed businesses looking for an exit, but who at the same time want to give their employees a secure future.”
During the delegates’ open debate, **Kay Ballard** of **Kingfisher** said that she and other issuers were worried by the consolidation in the share scheme service provider industry.
“The number of providers is dwindling, which means that they are eating up choice. As they are becoming bigger and bigger, they make it clear that what they have to offer is all that they are going to offer. It’s not the bespoke service it used to be,” she said. Her view was supported by **Claudia Yañez** of **SunPower Corporation,** who said that service providers should concentrate more on customer service. Providers had to design more ‘holistic’ customer profiles, based on employees’ experiences of workplace equity participation.
**Lead sponsor Equiniti provides award-winning executive, Sharesave & SIP plans and a wide variety of other employee benefits management services. It is the leading share plans administration provider for UK-listed companies and manages the second largest UK Flexible Benefits plan.*

ROME 2015 – a note for your diaries: the Centre’s 27th annual European conference will, by popular acclaim, again take place at the **Residenza Di Ripetta Hotel** in central Rome on **Thursday June 4 and Friday June 5**, next year. The *vox pop* for next year’s venue, held by the Centre post Rome, produced an overwhelming majority among our regular conference goers for Rome, with Vienna in a distant second place and Istanbul third. If you have any questions about co-sponsorship opportunities for this event, and/or are interested in a speaker slot, please contact Centre international director, Fred Hackworth, at: fhackworth@hurlstons.com

Centre Awards 2014 finalists
Chairman Malcolm Hurlston CBE, announced the names of the 2014 Esop Awards finalists during the cocktail party at the Centre’s 26th annual employee equity conference in Rome. The finalists for the various categories are:
Best international all-employee share plan (>1,500 employees)
BT, nominated by Equiniti, is a FTSE 100 British multinational telecommunications services company with operations in over 170 countries.
Shell, nominated by Computershare, is a FTSE 100 multinational oil and gas company.
WestJet Airlines, self-nominated, is a Canadian low-cost carrier that provides scheduled and charter air services to 89 destinations in Canada, the US, Europe, Mexico, Central America and the Caribbean. Founded in 1996 it is the second largest carrier behind Air Canada and the eighth-largest North American airline by passengers carried. It has 9,600 employees and is traded on the Toronto Stock Exchange.
Best all-employee share plan (<1,500 employees)
Apache Corporation, nominated by Computershare, is an oil and gas exploration company with operations in the US, Argentina, Australia, Canada, Egypt and UK North Sea. It is listed on the NYSE and is an S&P 500 Component.
Conviviality Retail, nominated by Capita, is the UK’s

largest franchised off-licence and convenience chain. It is listed in the FTSE AIM All-Share.

Henderson Global Investors, self-nominated, is a UK-based investment manager. It is part of Henderson Group, which is listed in the FTSE 250 Index.

TLC Marketing Group, nominated by SharePlanPartners, is a private entity which designs, and advises companies on the use of consumer incentive campaigns, covering free travel and lifestyle awards for customer acquisition and retention.

Best all-employee share plan communications

British Sky Broadcasting Group, nominated by Capita, is a FTSE 100 satellite broadcasting, broadband and telephone services company.

BT, nominated by Equiniti.

Conviviality Retail, self-nominated.

Henderson Global Investors, self-nominated.

Home Retail Group, nominated by YBS, is the UK's leading home and general merchandise retailers (parent company of Argos and Homebase). Constituent of the FTSE 250 Index.

Rackspace, self-nominated, is an IT open cloud hosting company based in Texas, USA, with offices in Australia, UK, Switzerland, Israel, the Netherlands, India and Hong Kong. It is traded on the NYSE.

Rio Tinto, self-nominated, is a British-Australian multinational metals and mining corporation headquartered in London. It is listed on the London Stock Exchange, New York Stock Exchange and Australian Securities Exchange.

SSE (formerly Scottish and Southern Energy plc), nominated by Computershare, is a Scottish electric utility company headquartered in Perth, which operates in Ireland and across the UK. It is a constituent of the FTSE 100.

Best inclusive use of employee shareholder contracts

Oxis Energy Ltd, nominated by Bird & Bird, is based in Culham Science Centre in Oxfordshire and is working to develop an innovative Lithium Sulphur battery chemistry that is lighter and safer than existing rechargeable batteries and maintenance free. It is a private company and was founded in 2000 as Intellikraft Limited before changing its name in 2005.

Nominations remain open for the Centre's special one-off award: "Best inclusive use of employee shareholder contracts". This award will recognise the achievements of companies which have applied the latest tax advantaged share scheme in a manner that benefits ordinary employees. If you wish to nominate a client for this award, please contact Harry Atkinson (esop@esopcentre.com or +44 (0)20 7239 4971) for further details.

The Centre's 2014 Awards Dinner will take place at the RAF Club in Piccadilly, London W1, on **Thursday October 30.** The reception and dinner brings together more than one hundred guests – representing UK and international plan issuer companies and their employee equity advisors – to recognise the best in employee share ownership. This highly enjoyable black -tie event is the perfect way to celebrate the achievements of the year with clients, colleagues and peers.

Single seats: members £170 non-member practitioner £225 non-member issuer £185

Tables of ten: members £1,600 non-member practitioner £2,000 non-member issuer £1,700

Prices do not include VAT.

Last year was a sell-out so early bookings are advised. Contact the Centre using the details below for more information or to book your places. See the awards dinner dedicated webpage at *http://tinyurl.com/lasazvs*. Email: esop@esopcentre.com Phone: +44 20 7239 4971

Investors in **TSB**, the challenger bank which is being spun out from **Lloyds**, watched its shares rise on its stock market debut. The flotation price was 260p per share and demand was so high that Lloyds sold off 38.5 percent of TSB's equity, far more than intended in the first tranche sale. The rest will be sold off before the end of 2015. TSB Bank is to hand all 8,600 members of staff £100 in free shares following its initial public offering (IPO). The **Chartered Institute for Professional Development** pointed to an attractive loan book and balance sheet, moderate offer price, and the bank's simpler, customer-focused rebranding as potential factors that contributed to a strong opening share price. "TSB promises modest bonuses" and a "John Lewis approach," City AM declared, with all-staff bonuses of up to 15 percent based on customer service performance. John Lewis ceo Charlie Mayfield reportedly earned £1.52m last year, which was 60 times an employee partners' average salary; Paul Pester's package at TSB will be no more than 65 times that of branch staff, and his bonus will be capped at 100 percent of pay, half the level of some of his rivals.

Sports Direct unveiled its third attempt to reward billionaire executive deputy chairman, **Mike Ashley**, with a multimillion-pound incentive – but was immediately criticised by shareholders who bemoaned a lack of transparency and consultation. In April investors vetoed a £73m bonus for Ashley, the second time they had blocked an award for the company's founder and largest shareholder. In an attempt to get round investor resistance, the company has returned with another proposal to enrol Ashley in the company-wide staff bonus scheme. The plan hands members 25m free shares – worth just over £200m at the current share price – if the firm doubles earnings by 2019. But Sports Direct did not spell out how many executive directors or staff would be enrolled or how shares would be allocated. The vast majority of Sports Direct workers, many employed on zero-hours contracts, will get nothing. "It's extremely disappointing that they have proposed this scheme without any prior consultation," said one investor, who declined to be named. "There is also no detail as to any individual allocations, which is unhelpful." A previous proposal was knocked back by shareholders because of concerns over the related performance targets. Shareholders have been summoned to a general meeting on July 2 to vote on the revised plan.

The new share scheme regime

The system of formal HMRC approval of tax approved share plans ended on April 5 2014 and instead companies now have to self-certify that their approved plans (both existing and new plans) comply with the legislation, said Centre member **Clifford Chance**.

"Companies have until July 2015 to self-certify existing approved plans – see more below – and we would suggest holding off from amending existing plans until we have HMRC guidance on a few grey areas. We hope to have this in the next few weeks and we will provide a further update once the guidance has been published. The new regime is a two-step process – first, the plan is registered online and then the company self-certifies that the plan complies with the relevant legislation." In a recent bulletin, HMRC set out some guidance on the practicalities of registering under the new self-certification regime. This bulletin sets out a suggested timetable for registering an existing approved plan but, as mentioned above, the actual deadline is July 6 2015 for existing approved plans. The bulletin is available at: *http://tinyurl.com/ogggqqx*.

Companies will have to make their annual share plan returns online from the 2014-15 tax year and will not be able to make those returns online if they have not registered their plans. There are different dates by which a company needs to "self-certify" depending on whether the plan is an existing tax approved plan or a new tax-favoured plan.

It is important to make sure existing tax approved plans are registered on time, particularly for CSOPs/executive options. While this should be simple for plans currently operated by a company, it also makes sense to check whether there are any older plans that are not used for current awards and which the company is running down.

The tax legislation for tax approved plans is changing. The Finance Bill 2014 provides that a number of the amendments made by it to the existing legislation are automatically read-in to plans approved by HMRC before April 6 2014. Many (but not all) of these read-in amendments apply to both new and existing options/awards. "Despite these read-in provisions, we recommend that plan rules are formally amended to ensure that the plans are operated in accordance with the revised legislation. Not only is this important from a compliance perspective, but it will make it far simpler for share plan administration and HR teams to operate existing plans. And we suggest employee communications are checked to see whether they will need to be updated," added Clifford Chance.

The new obligations apply to all types of employee share based incentive, not just those which are tax advantaged, although the changes to formerly HMRC approved plans are the most fundamental. All plans and other arrangements enabling employees to acquire shares, share options or other securities must be registered online to obtain a reference number so they can submit annual returns from this tax year. Returns will no longer be accepted in paper form and instead will need to be submitted online via HMRC's new ERS system, which is part of the PAYE online system, said lawyers **Burges Salmon**. Where companies are not already registered for PAYE online they will need to do so. Activation can take weeks and so action should be taken well in advance of the deadlines. The scheme registration number will be provided separately to the company, which must check its online filing inbox for details. If the arrangement is not registered in time then the company will not be able to submit its annual return and penalties will be charged. Companies may want to register all non tax advantaged arrangements as one so that only one annual return needs to be submitted to minimise exposure to penalties.

The issues for tax advantaged schemes are more significant. Companies will now need to self-certify and declare to HMRC that the plan meets all the relevant requirements of the legislation. Compliance will be enforced by HMRC opening an enquiry, which could result in harsh penalties. In addition to penalties, CSOP, SAYE, SIP and Enterprise Management Incentive options risk losing their tax advantages if they are not registered and/or self-certified with returns submitted online within the necessary deadlines. HMRC is unlikely to take a *light touch* approach.

All arrangements that existed prior to April 6 2014 and any established during this tax year must be registered and, where relevant, self-certified before July 6 2015. New arrangements must be registered (and if necessary self-certified) by July 6 following the end of the tax year in which the first awards were made. It is recommended that the registration process is started well in advance of the deadline.

For tax years up to and including 2013-14 annual returns must be sent to HMRC in hard copy only. From tax year 2014-15 all annual returns must be filed online against the reference number obtained from registration. As in previous years, information about grants and exercises, and other relevant information, must be included. Templates are available.

EMI plans need to be registered because EMI options granted on or after April 6 this year must be notified online and from tax year 2014-15 onwards annual returns must be filed online. Companies should ensure that their EMI schemes are registered with HMRC in plenty of time for the relevant filing and notification deadlines.

Where EMI options were granted from April 6 2014 onwards, the notification must confirm that the employer has retained a declaration signed by the option holder that s/he meets the necessary working time requirements. HMRC may ask to inspect this declaration. The employer must provide a copy to the option holder within seven days of him or her signing it and should keep a record to evidence this.

Penalties, including the loss of tax exemption, may apply if the option holder declaration is not produced or provided to the option holder within the specified time limits. Automatic fines are expected to apply as soon as a return, which HMRC expected to receive, has not arrived. HMRC may well apply other penalties as part of PAYE audits and so keeping records of compliance will be increasingly important.

On the move

For the third successive year, **Bedell Cristin** partner **Zillah Howard** has won the 'Best in Offshore' contest at the *Europe Women in Business Law Awards*, organised by the *Euromoney Legal Media Group*. The awards celebrate the achievements of women leading the field in the legal sector across Europe. Zillah was presented with the award at the London Hilton Hotel on Park Lane in a ceremony attended by more than 200 leading lawyers from many major law firms in London and across Europe. Zillah focuses on trusts and foundations, international estate planning issues, and philanthropy. Described as a ‘standout practitioner’ in the current Legal 500 directory, and included in Band One of ranked lawyers in the Chambers 2014 legal directory, Zillah has a career in offshore legal services spanning more than 25 years.

Graeme Nuttall was awarded an OBE in the Queen’s Birthday Honours list in recognition of his work on employee ownership, employee share schemes and public service mutuals. Mr Nuttall is author of the Nuttall Review of Employee Ownership and is tax partner at Fieldfisher. He has been a driving force behind the increasing profile of employee ownership. “I am delighted that this award is given for services to employee share plans and public service mutuals, as well as services to employee ownership,” said Mr Nuttall. “It is important for the UK’s economy, and other economies, to make the most of employee share ownership in all its forms. The award is timely as this year’s Finance Bill is nearing enactment, complete with new tax exemptions to promote the trust model of employee ownership - a central recommendation of the Nuttall Review.”

To help celebrate **Employee Ownership Day** on July 4, **Pett Franklin & Co. LLP** is opening its offices in Birmingham to any company or shareholders wishing to explore the possibilities for establishing employee ownership for their company. Pett Franklin staff will be in their offices at 116 Colmore Row, Birmingham (five minutes walk from New Street Station) from 10am to 5pm on July 4 2014 to meet in person or talk over the telephone if preferred. To register for the email Shanel Nelson at: shanel.nelson@pettfranklin.com. There is no cost for attendance.

Michael Whalley retired as a partner in the London office of Minter Ellison *(see previous issue*) on June 30 after 35 years with the firm. He told *newspad:* “I have greatly enjoyed working with you on employee share scheme matters over much of that time and we are proud to have developed a specialist practice in this area in our London office (supported by specialist colleagues in Australia), and I must thank you for the support which you have given to us in this area.”

Troughing again

CEO compensation has increased by 937 percent over the last three decades, according to a new study. The rise compares with a dismal 10.2 percent cumulative rise for the average US worker over the same time frame, putting into stark contrast the relative fortunes of the superrich and everyday employees in an increasingly economically divided America.

The report, released by the Economic Policy Institute (EPI), found that average ceo compensation, which includes stock bonuses, was $15.2 million in 2013, up 2.8 percent from 2012 and 21.7 percent since 2010. That increase follows a trend since 1978 of ceo pay outpacing other economic growth factors. EPI says the 937 percent rise in pay is more than double the rate that the stock market grew in the same years. The mismatched pace between ceos and the typical worker means that ceos earned on average $295 for every dollar their employees earned in 2013. The report is based on an analysis of a database of ceo pay for the largest 350 public companies in the US from 1978 to 2013. Numerous studies have outlined the growing divide between America’s rich and poor, in which stock prices continue to climb past their pre-recession peaks, even as tens of millions struggle to make ends meet.

EPI’s report shows that ceos are not only pulling away from average workers, but from other highly paid ones as well. Research found that average ceo pay was 4.75 times greater in 2012 than the typical earnings of others within the top 0.1 percent of the economy, suggesting that ceo compensation has broken away from the market forces governing the vast majority of American employees, even those making millions a year. Despite the continued increase in pay since 2010, average ceo pay is still lower than in 2007, when it reached $18.5m just before the global economic crisis.

The study’s authors claim that the continued rise in ceo pay has dramatic consequences for inequality in the US. They say that because the highest paid ceos tend to pay their executives more while keeping employee pay stagnant, increases in ceo pay drive wealth to the top one percent of earners. Because top earners tend to invest in the stock market, increasing ceo pay can further concentrate wealth in assets that will never be accessible to average Americans. “It is sometimes thought that the rise of ceo compensation is a symbolic issue and does not have consequences for the vast majority of people,” the authors wrote. “However, escalating ceo compensation and, correspondingly, executive compensation more generally, have fuelled the growth of the top one percent.”

Chief executives of Britain’s biggest companies received bigger bonuses over 2013 with FTSE 100 ceos raking in £897,000 on average, compared to £865,000 the year before. According to FIT Remuneration Consultants, the increase in bonuses suggests a stronger correlation between performance and extra rewards as the FTSE 100 index increased by 14.4 percent over the last year. “While this may surprise some, the evidence is clear that a typical FTSE 100 executive director’s *total* take home pay fell last year compared with the year before,” said Rob Burdett, a partner at FIT. “This shows the lasting impact of the 2012 Shareholders’ Spring and the new disclosure rules and voting powers on pay now enjoyed by shareholders.” Meanwhile, FTSE 100 base salaries dipped, albeit very slightly, from £870,000 in 2012 to an average £868,000 in 2013. The median salary increase for executive directors has been broadly consistent with staff - at between two and three percent, added FIT.

Senior NHS managers are receiving pay rises and five figure bonuses when most nurses in England have been refused a one per cent cost-of-living rise, research has revealed. Half of England’s NHS trusts have awarded pay rises of at least £5,000 to one or more executive directors in the past two years, the college discovered. Two chief executives have received bonuses worth up to £45,000 each. The poll of 126 trusts reveals that executive packages, which include pay, bonuses and other benefits such as leased cars, rose by an average 6.1 percent between 2011-12 and 2013-14.

World football’s top 25 officials have had their salaries doubled after a new ethics committee promised to stamp out their bonuses, an investigation has claimed. **Fifa** faces corruption claims over the awarding of the 2022 World Cup to Qatar. According to *The Sunday Times*, each of the 25 members' salaries has risen from £59,000 to £118,000 this year after the bonuses - reputedly worth £44,000 a year - were scrapped.

CONFERENCES

GUERNSEY: October 3 2014

The Centre invites submissions from members to speak at this year's annual Guernsey conference, which will be held on Friday October 3 at the St Pierre Park Hotel. We are seeking a selection of expert speakers to present employee equity topics of interest to an audience of trustees.

The Employee Share Ownership Centre and STEP (Society of Trust and Estate Practitioners) have co-hosted a series of successful Channel Islands conferences over the last few years allowing an audience largely of trustees to learn and share knowledge about issues relating to the use of trusts in employee share ownership. Our aim is to provide a mix of mainland and local speakers who can present a balanced set of topics relevant to contemporary and ongoing developments in the field.

The Centre's conferences are accredited by the Law Society and attract appreciative and knowledgeable audiences. Speakers at previous events have benefited from many good opportunities to initiate ongoing business relationships.

If you are interested in speaking, please contact Harry Atkinson – at hatkinson@esopcentre.com or +44 (0)207 239 4971 – with your suggested topic.

Please note that there are a limited number of speaking slots available so it is advisable to register your interest as soon as possible.

DAVOS: February 5 & 6 2015

Prospective speakers and conference sponsors are invited to contact international director Fred Hackworth asap to discuss the slots available for the Centre's 16th Global Employee Equity Forum, which takes place at the **Hotel Seehof** in **Davos Dorf** on **Thursday February 5** and **Friday February 6** next year. After more than a dozen years, this pivotal Centre event is moving home – from the Steigenberger Belvedere to the four star Hotel Seehof, which is located less than 100 metres from the Parsenne Funicular and ski lifts in neighbouring Davos Dorf. The Seehof contains a Michelin starred restaurant. The Belvedere lifted its room charges dramatically for our conference last February and this convinced the Centre that our package deal prices would no longer be viable. The new deal obtained from the Seehof enables the Centre to reduce attendance fees next year, while maintaining the high standard of facilities and hospitality that members have come to expect from Davos. The smallest bedrooms we will offer in the Seehof will be 25m^2.

Conference package Fees*

Speakers

Service Providers GBP **855** Plan issuers GBP **575**

Centre member delegates

Service Providers GBP **975** Plan issuers GBP **635**

Non-member delegates

Service Providers GBP **1,475** Plan Issuers GBP **675**

**No sales tax is payable on these fees.*

The Davos 2015 package includes two nights' accommodation (February 4 & 5) with breakfasts and lunches provided in the four star Hotel Seehof in Davos Dorf (www.seehofdavos.ch) plus admission to all conference sessions, the annual cocktail party and a bound delegate handbook. There will be an optional pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. Contact Fred for more information or to register your interest: fhackworth@hurlstons.com.

Eso boogies at Bouygues

Though French employee financial participation (EFP) has suffered knock-backs in recent years, some top companies are streets ahead of most UK based multinationals in terms of employee equity. One such is French industrial & telecoms giant **Bouygues.** Thanks to a dynamic employee share ownership policy, introduced in 1970 then regularly improved, Bouygues employees are the Group's second largest shareholder. Employees hold almost **25 percent** of the capital and **30 percent** of the voting rights through employee mutual funds. With nearly 60,000 employees subscribing to these funds, Bouygues leads France's CAC 40 index in terms of employee share ownership.

Two directors representing employee shareholders were appointed to Bouygues' Board of Directors in June 1995. Sandra Nombret and Michèle Vilain represent employee shareholders, reflecting the increase in the number of women serving on the group's board of directors.

Martin Bouygues created a corporate savings plan invested in Bouygues shares in 1990 in order to give employees a stake in the Group's growth. The plan, to which the Group makes matching contributions, is a great success. The original scheme has been steadily improved over the years, encouraging small pay-ins in order to increase the number of investors. In addition, capital increases reserved for Group employees have further strengthened the position of employee shareholders. With the aim of improving the Group's social policy - and to address the problem of the foreseeable decline in retired people's pension income - Bouygues introduced a collective retirement savings scheme in January 2006 for employees of the Group's French companies. Some of the landmarks along the way include:

Bouygues Confiance, the first leveraged capital increase reserved for employees, was launched in December 1999. Limited to €230m and intended for the 42,000 Group employees tax resident in France, the capital increase was oversubscribed by 23 percent. More than 20,000 employees subscribed to the scheme, which reached maturity in January 2005. Similar successful *Confiance* offers followed.

***Bouygues Partage:* an employee share ownership plan accessible on equal terms**

In December 2006, Bouygues' board of directors decided to install a new employee share ownership plan called *Bouygues Partage*. Launched in April 2007, *Bouygues Partage* was a huge success. The plan was subscribed by 76 percent of eligible employees (more than 53,000 staff members in France).

***Bouygues Partage 2*, new employee share ownership scheme on equal terms**

Following the success of the *Bouygues Partage* employee share ownership scheme in 2007, the directors decided in June 2009 to approve a new capital increase for employees. In November 2009, 55,326 employees, or 72.5 percent of eligible employees, subscribed to *Bouygues Partage 2*. The capital increase was €193m.

Bouygues Confiance 6, the eighth leveraged capital increase, was made available in November 2012 to employees of the group's French companies working under employment contracts governed by French law. The authorised capital increase was €150m. More than 17,500 employees subscribed to *Bouygues Confiance 6* (almost 23 percent of those eligible for the company savings scheme).

FATCA

The offshore account information reporting and withholding regime, codified in the US Internal Revenue Code and in Treasury Regulations, requires US financial institutions (USFIs) and other agents to withhold 30 percent of payments made to: (1) foreign financial institutions (FFIs) that have not agreed to report information about their US person account-holders to the IRS and (2) non-financial foreign entities (NFFEs) that are the beneficial owners of the payments and that do not report information about their US owners to the withholding agent.

In order to be compliant with FATCA, participating FFIs (PFFIs) must register with the IRS and reach an agreement with the IRS (an "FFI agreement") to report certain information about their US accounts, said lawyers **Shearman & Sterling LLP**.

Accordingly, PFFIs must generally agree to: (1) comply with due diligence procedures in order to identify US account-holders; (2) report information on US account-holders to the IRS on an annual basis; (3) comply with requests by the IRS for additional information; (4) obtain waivers from each US account-holder of domestic law that would otherwise prevent the disclosure of such information; and (5) act as a withholding agent on certain foreign pass-through payments made to recalcitrant account holders_and non-participating FFIs (NPPIs). FFIs in jurisdictions that have an intergovernmental agreement (IGA) with the US will generally be deemed FATCA compliant if they comply with the requirements of the IGA and register accordingly and will not need a separate FFI agreement with the IRS.

In order to be compliant with FATCA and avoid reprisals, NFFEs must report identifying information about their substantial US owners or certify that they have no substantial US owners to the withholding agent.

On July 1, this year, USFIs and other withholding agents will be required to start withholding on payments of US source dividends, interest, rents, salaries, wages, premiums, annuities and other types of fixed and determinable annual payments (withholdable payments) made after June 30 to NPFFIs and NFFEs that fail to meet the reporting requirement unless the payments are made to cover debt obligations outstanding as of July 1.

Registering as PFFI or deemed-compliant FFI with the IRS is done primarily through the IRS website._Once registration is finalised, FFIs will receive a notice that the registration has been accepted and will be issued a Global Intermediary Identification Number (GIIN), to be used for reporting purposes and to identify the status of the FFI to withholding agents. The IRS posted the first list of registered FFIs on June 2 on the IRS website and is expected to update it on a monthly basis. FFI agreements reached before June 30 2014 between the IRS and PFFIs will have an effective date of June 30 2014. Beginning July 1 this year, USFIs and other withholding agents will be required to implement new account opening procedures to determine whether such accounts are to be treated as US accounts, accounts of PFFIs, accounts of NPFFIs, accounts of deemed-compliant FFIs, accounts of NFFEs, or other types of account classifications under FATCA. In the case of PFFIs, withholding agents will be required to implement new account opening procedures as of the effective date of its FFI agreement.

Taxation of IMEs

Important changes to the taxation of share options and awards granted to internationally mobile employees (IMEs) come into force in **April 2015,** warned **Clifford Chance**. Employers of IMEs are advised to prepare early for the changes. At present the residence status of the IME on the date of grant is critical in determining the UK tax treatment, but this will no longer be the case under the new rules. In future, employers will need to look at whether an IME meets one or more 'international mobility conditions.' If they do, the income arising from share plan awards may be apportioned between income treated as earned in the UK and income treated as earned outside the UK.

A relevant period will apply for each type of employment-related security (ERS) - e.g. option or award. There are different relevant periods depending on the type of ERS - in the case of an option, for example, it will normally be the period between grant and vesting.

The international mobility conditions are, broadly, that the IME is:

* not UK resident for any part of the relevant period (regardless of domicile); in this case, the portion of the ERS income treated as earned outside the UK will be outside the scope of UK income tax;
* UK resident but non-domiciled and taxable on the remittance basis; in this case, the portion of the ERS income treated as earned outside the UK will only be subject to UK income tax if it is remitted to the UK.

The new rules will apply from April 6 2015 and will apply to all existing options/awards as well as new options/awards granted from April 6 2015.

The good news is that employers will not need to operate two different systems in parallel, depending on when the option/award was granted, but there will be winners and losers under the new regime:

Inbound IMEs may now find they have an unexpected UK tax bill on the exercise of their options or vesting of other awards (e.g. restricted stock); conversely, some outbound IMEs may be able to take advantage of the new rules to reduce their UK tax bill.

Further changes will come into effect on April 6 2015 (and will then apply to both existing and future options/ awards). Under the new rules a UK company will be able to claim a statutory CT deduction:

* for options exercised/shares acquired by an IME seconded to it from a non-UK company; and
* where an IME acquires an option/shares by reason of a non-UK employment and at that time or later takes up employment with the UK company.

The CT relief will be restricted to the amount on which the IME is subject to UK income tax.

Oz share schemes reporting

The due date for employers to report share based awards granted to their employees is fast approaching, said **Minter Ellison.** Many employers will now be familiar with the reporting regime but there are still some traps of which to be aware, particularly if awards have been granted to internationally mobile employees.

Awards covered by the reporting regime are wide ranging and include shares, options, performance rights and restricted stock units. The employees covered can extend to an employee's associate (such as their family company or trust, or their spouse), directors, contractors and consultants.

The reporting regime requires the provider of an award to give an ESS Statement to employees, and an ESS Annual Report to the Australian Taxation Office by July 14 and August 14, respectively, if a taxing event has occurred during the 2013-2014 tax year.

This means that reporting will be required in two main situations:

* if an employee has been granted an award during the 2013-2014 tax year and the discount on that interest is taxable during that year (that is, the award was taxed upfront); and
* if an employee has previously been granted an award in an earlier tax year and a deferred taxing point occurs during the 2013-2014 tax year.

Employers should confirm whether any employees have left their group during the year and retained tax deferred awards under a 'good leaver' policy, as these awards will need to be reported. If an award contains a cash-out discretion that can be exercised by the employer (common in many US based plans), but the award was settled with shares during the tax year, then reporting for 'good leaver' employees may have been required within 30 days of settlement.

Employers may be unaware of a further situation in which reporting is required - namely, following the tax year in which tax deferred awards are *granted* to an employee. The ATO's policy in previous years has been to ignore this requirement by relying on the Commissioner's power in the *Taxation Administration Act 1953* to defer the time for submitting an approved form to the Commissioner or another entity (which would cover both the Annual Report and the ESS Statement). The ATO is expected to continue this administrative practice this year but given its increasing focus on ESS reporting compliance, some employers may want to confirm this practice directly with the ATO.

Employers should understand how the tax laws affect internationally mobile employees that are holding awards as this has a material bearing on what information they must include in the ESS Statements and Annual Report.

For last year's reporting season, the ATO said that if an employee is only taxable on a portion of the discount - because they were a non-resident for part of the period to which the award relates - reporting is only required for the taxable portion where this can be calculated by the provider. Otherwise, the full discount should be reported and then, if and when the provider becomes aware of the taxable portion, they should issue an amended statement to the employee and lodge an amended Annual Report with the ATO.

The ATO is expected to adopt a similar approach this year but has not confirmed that this will be the case. The amendment scenario has the potential to give providers some compliance headaches; it is therefore advisable to report the actual taxable amount where possible. This should benefit the employee, who will have calculated and declared only the taxable portion in their Australian tax return. The ATO uses the information in the Annual Report to data match against tax returns, so any discrepancy between the employee and provider reports will be flagged for attention.

Queen's Speech and Finance Bill

The State Opening of Parliament took place on June 4, followed by the Queen's Speech, the text of which is available at *http://deloi.tt/1ukUpCB*. The new rules on the timing of general elections mean that the next election will be on **May 7 2015**, making this the last session of the current Parliament. The government announced eleven new Bills in the Queen's Speech, including two concerning pensions. One will deal with the changes to defined contribution schemes announced at Budget 2014. The other allows for the introduction of Dutch-style pooled pension funds, to be known as *Defined Ambition* pensions. The House of Commons Library published a note on Defined Ambition pension schemes, which explains the background to the proposals and the initial reaction to the announcement.

There is also a National Insurance Contributions (NICs) Bill, which will simplify the payment of Class 2 contributions and apply the provisions on accelerated payment notices (Finance Bill Clauses 212 to 226; Schedules 26 to 29) to NICs.

The re-named Finance Bill can be accessed at:
http://deloi.tt/1pdPp0d A large number of new Government amendments have been tabled.

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