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it's our business

newspad of the Employee Share Ownership Centre

CSOPs under threat

The future of the Company Share Option Plan (CSOP), one of the UK's two discretionary tax-approved employee share schemes, is under threat, *newspad* can reveal.

The Office of Tax Simplification (OTS), which is reviewing the effectiveness of tax-advantaged share schemes, may recommend to ministers that CSOP should either be scrapped or combined with the hugely successful Enterprise Management Incentive (EMI).

The Centre has pledged to fight any ministerial attempt to abolish the CSOP. Chairman Malcolm Hurlston said: "The CSOP is the window of hope into employee ownership for the low-paid and part-time workers. Its preservation and development is essential in a fair society."

The CSOP was originally conceived in 1996 to provide a beneficial platform for motivating company executives, but more recently it has been used to reward lower paid and part-time employees too, particularly in supermarket and other retail groups.

Until the collapse of Lehman Brothers there were many heart-warming media stories about low-paid supermarket check-out girls gaining windfalls of up to £8,000 each from CSOP awards due to the steady climb of their employer's share price.

The CSOP was still very popular with companies a decade ago when there more than 5,000 live schemes, but by 2010 there were only 1,910 live CSOPs, with just 40,000 employees holding options, compared to ten times as many back in 2000.

The plan allows a company to grant tax-advantaged options to its employee up to a maximum value of £30,000. Options are awarded to employees at market value and are not subject to income tax, provided they are exercised at least three years after being granted.

EMI, the other major discretionary share option scheme in the UK, allows companies with gross assets below £30m to award options to as many employees as it chooses so long as the outstanding options are worth no more than £3m at any one time. It has proved extremely popular, with more than 10,000 SME companies operating an EMI. The number of employees per year being granted EMI options has, however, slumped from 26,500 in 2008 to 16,900 in 2010.

Apart from tinkering with, combining, or even abolishing, one of the tax approved discretionary employee share option scheme, the OTS committee is considering whether to recommend that approved share schemes should become self-certified.

It could save taxpayer's money if HMRC no longer needed to approve new share schemes and moved instead a self-certification process, but such a change could create problems for share schemes advisers and companies who like knowing that as long as they do not alter any of their scheme rules they are guaranteed a certain tax treatment.

The OTS Share Scheme Consultative Committee started work in September 2011, examining the efficacy of the four HMRC approved employee share schemes (SAYE, SIP, CSOP and EMI). Since then, the OTS has organised road shows with companies, advisers and other stakeholders, gathered evidence and held three meetings with the consultative

From the Chairman

Welcome aboard, Norman Lamb. Days after we met at the Lib Dem think tank he succeeded Ed Davey as our minister at Business in the Huhne reshuffle. He has a better bent towards practicalities so I asked him to ensure that at long last Business promoted EMI (even though it was invented at the Treasury). With Mark Hoban at HMT and Norman at Business common sense stands every chance.

Malcolm Hurlston

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committee drawn from representatives from industry, administrators, reward consultants and the legal and tax professions.

Mike Landon of MM&K, who represents the ESOP Centre on this committee told *newspad*: "The OTS's report is due to be published in March. This is expected to contain some detailed recommendations for simplifying the schemes, including removing inconsistencies between them. There will also be proposals for moving away from the process of HMRC approval towards self-certification of schemes.

"A big area of uncertainty, however, is the future of CSOPs, currently the most flexible of the tax-advantaged share schemes. The OTS has considered both the complete abolition of CSOPs and combining them with EMI."

The Minutes of the meeting of the OTS Board on 3rd February said: "The Consultative Committee for the share schemes review had met earlier that morning. The group had been generally supportive of the emerging OTS proposals for simplifying individual schemes, but had mixed views on more ambitious changes around merging schemes. There was more support for major changes to the discretionary schemes (CSOP, EMI) than for the all-employee schemes (SIP, SAYE).

"The evidence for the impact of tax advantaged share schemes was mixed, but there was likely to be some new academic research published shortly into UK schemes (but too late to be included in the OTS report). The consultative committee members generally believed that the schemes did have a positive impact, based on their experience. Adam Broke thought this was a crucial question that the report needed to address – did the tax advantaged schemes achieve their stated policy aims?

"One key administrative issue that the review was looking at was the whole issue of whether new share schemes needed to be approved by HMRC in advance, or whether it would be possible to move to a self-certification process. Although the consultative committee was largely in favour of this move and recognised it could deliver significant simplification, others thought it could lead to reduced certainty for scheme advisers. Generally the board thought the review was a very thorough piece of work, with the right combination of emerging proposals. Looking at the overall package of proposals, the OTS needed to bear in mind its remit to be broadly tax neutral, whilst ensuring that the proposals were likely to deliver worthwhile simplifications."

John Whiting of the Office of Tax Simplification will be the next guest in a series of member dinner-debates on April 2 at the RAF Club where the future of the CSOP will be up for discussion. Places at the dinner are available for £120+Vat. Contact jwigzell@hurlstons.com to reserve a place.

DAVOS

The world of equity remuneration had never before been under such scrutiny as today, Centre chairman Malcolm Hurlston told the 13th annual employee equity forum in Davos: "We are on the cusp of an entirely different world in which a share schemes conference like this starts with issues of remuneration."

He said companies should recognise that there was a 'fragrance factor' – "If those at the top are filling their boots then looks better if those further down the chain profit too," he told more than 40 delegates.

Reviewing the year, the chairman said that the Centre had increased its staffing and had never had such a major programme of events as in 2012, including a financial eduction for employees seminar, which had the support of the Money Advice Service. He urged delegates to attend the Centre's 24th annual conference in Paris on June 21 & 22 (see inside).

Mr. Hurlston said that the Centre had been invited to join the Office of Tax Simplification committee on share scheme reorganisation, on which the Centre was being represented by Mike Landon of MM & K. The Company Share Option Plan was under threat and it was vital that it should be rescued because it was the only approved share scheme in the UK which had brought employee share ownership to the low paid and part-time employees, he reported.

In addition, he had launched a Five Point plan for more trade union involvement in Eso last year, while speaking at a Brussels conference for the European Economic & Social Committee's Pro-EFP project.

The Centre had hosted think tank discussions on Royal Mail privatisation. Postal employees are likely to emerge not only with a ten percent trust based stake but also with the possibility of individual share awards too.

There had been a wind of change at the Association of British Insurers with the arrival of Otto Thorensen: "With his appointment it was always clear we would have a new approach to executive remuneration. Soon we will have shareholders with a cogent role in share scheme planning and operation," said Mr Hurlston

On the international front, he was very pleased to have Marco Cilento from the Italian trade union CISL to speak to delegates on an Eso scheme for Fiat.

"Wider and deeper employee financial participation is needed more than ever as the occupational pensions crisis deepens and corporates either freeze or even reduce rank-and-file pay. Though Eso was never intended to replace wage and salary increases, nor indeed pensions, it is the long–term savings aspects of employee equity which we must promote more often and more widely," he added.

Computershare was given a special thank-you for having helped produce such a high quality and attractive delegate handbook for the conference.

Alan Judes of **Strategic Remuneration** said that in the context of executive remuneration, there had been a lot of talk about risk but little about integrating it into the matrix. Politics was the gorilla in the room where the remuneration policy committee sat. The government was reacting to whatever pressure came up almost every week. Ministers wanted greater transparency, more shareholder power and more diverse remuneration committees – as best practice lead to the business community.

The next step was toward primary legislation – which meant changing the Companies Act 2006. They would change remuneration regulations; there would be changes in the corporate governance codes and they would look at the stewardship code. Every aspect of governance was going to be re-examined: "Consultation proposals are due in March and we can expect a new Act by 2013, coming into force by 2014. So we were not going see any real change in the legislative requirements until a couple of years hence," he said.

"I see a common theme – risk should be factored into the reward packages of all large listed organisations, not just banks, because what companies are not doing is limiting risk appetite with pay, at all levels – annual incentives and long-term incentives.

Critics say there is too much detail in remuneration reports. Justification is what is required. We may be heading towards more complexity, not more simplicity," added Mr Judes.

"Credit Suisse has 1,600 people employed in risk analysis. Risk is being managed. But we have to incorporate it into remuneration policies – so we have to change remuneration structures to take risk into account."

The ABI was moving this away from just the banks and the crisis into the mainstream. Were we charging the correct rate for capital, he asked?

Amanda Flint of **BDO Human Capital** said that there had been a perceived failure to link pay and performance. If she were chair of a remuneration committee, she would say: "There is something wrong and we have to act." People asked for more shareholder activism, but institutions did a lot of box ticking. They tended to say: "These are interesting proposals but we won't vote for them – we'll abstain – jolly good." Had reward gone up so much? In the FTSE 100 'Yes' – in the FTSE 250 'A little bit,' but in the Aim companies 'No'.

The move towards displaying the pay packages of the eight most highly remunerated people in the organisation in the annual report would have a trickle down effect, Amanda forecast. Executive reward was such a hot issue that …"everyone is now getting in on the act - regulators- government, the Bank of England, representative bodies such as the CBI and so on."

Many ideas for restructuring reward incentives were flying around – e.g. having a single aggregate bonus pot each year and leaving directors to sort out who gets what. Bonus waivers were starting to have an effect too. Would all this activity produce 'better pay'? she asked - "Remuneration committees will have to step up their game." Demands for publication of top to bottom employee pay ratios were a red herring because the size of the ratio depended upon the nature of the company. "A bit of a mess is on the way," Amanda said.

She warned that the UK has to watch over-cooking the cake because in the Far East there was far less regulation and hence much more flexibility on bonus awards. So much for level playing fields.

Richard Nelson of **Howells Associates** introduced his case study – **Imagination Technologies (IT)** a multi-national company based in Hertforshire represented by **Tony Llewellyn** and **Dean Bradford.** Fast growing IT, an intellectual property company, had 600 employees worldwide and would soon have 1000, forecast Mr Llewellyn the company sec. IT produced graphics, formerly licensed to SEGA and now to Apple and produced PURE digital radios. Though the company is independent, Intel held 15 percent and Apple nine percent of the IT equity. They truly believed in Eso – even discussing share schemes during Pyrenean bike rides. In 2006 IT launched its first SAYE partly because in those days companies didn't have approved performance condition schemes for all employees. As a result, some employees made £70,000 profit on their SAYE-Sharesave participation, said Dean. Around 90 percent of participating employees made more than £10,600 profits and risked incurring CGT charges. So 102 ISAs were formed into which their SAYE gains were speedily transferred. This investment would total £2.2m by end of the next contract. Employees were happy that in some cases the SAYE earnings could help them move to bigger homes in the area. Tony said that employees were so content none had been lost in the last ten years. "We're trying to get more people for the technologies"

Richard said that, as the administrator, Howells's job was to catch the technology and get all the data into one place, which was work in progress. "All employees have a passion for their jobs – they love SAYE-Sharesave. They understand it – its simple and easy to administer."

Rob Collard of **Macfarlanes LLP**, discussed the evolution of EBTs in employee equity arrangements. EBTs were used for share based awards, warehousing shares of private companies, but their use in disguised remuneration and in bonus planning had been all but stopped by HMRC under the anti-avoidance heads.

EBTs have faced increasing regulation and FATCA was a nasty surprise as most trust companies would fall within the scope of the Act, so a 30 percent withholding tax could be looked at on a group basis, he warned.

There was an increased risk of legal challenges to trustees actions – beneficiaries generally didn't usually have much information and used not to challenge trustee decisions, but investments had gone bad and there have been more challenges. A recent tilt by HMRC at the offshore Hastings-Bass decision on the ability of trustees to rectify accidental mistakes raised more issues he added. To avoid these problems, people need to review share plans more often and and strive for a collaborative approach to managing trusts.

Jeremy Mindell of **Henderson Global Investors** discussed tax issues and traps in share schemes. He congratulated HMRC for "having played a blinder" over Disguised Remuneration – they had narrowed the scope of legitimate trust based arrangements for employee remuneration.

As nations tightened up their tax regulations, companies would face more and more problems over mobile employees incurring tax in say three jurisdictions within overlapping years, he forecast. Henderson faced similar problems to those experienced by trustees in the employee equity industry: a catastrophic fall in market prices when selling shares eg – during '9-11' – so that compensation had to be paid; falling foul of the taxman by failing to make the 90 day dealing deadline; worries over CGT liability and so on. Employee border-hopping would run foul of national withholding taxes, which would become universal among OECD member countries said Mr Henderson. In the Far East there had been high profile cases of company bosses going to prison for having concealed the grant of shares to employees. Worldwide, there was a clear tendency for countries to "reel back" on previously generous share scheme tax concessions. "Almost every Eurozone member state is hitting on share schemes," he added. Good communications between trustees, administrators and companies, plus regular reviews of equity plan rules, were essential if these pitfalls were to be avoided, he added.

Mike Landon of **MM & K** told delegates that the Esop Centre had successfully encouraged the UK government to investigate the best ways of simplifying employee share plan legislation. He described the work being undertaken in this field by the Office of Tax Simplification and the Centre's representations to it.

"A lot of current HMRC rules which govern share schemes are based on the assumption that employees will stay in their jobs for years and years, which is no longer the case," said Mike.

There were several drivers behind the reform moves: HMRC was trying to cut down its staff numbers; it was worried about tax avoidance and organisations, such as the European Economic & Social Committee, were calling for the installation of an EU-wide simple uniform tax incentive model to cover employee financial participation.

The problems inherent in the current tax system were substantial: there was too much detail; too many restrictions on whether employee options/ shares could be issued and very little real incentive for employees to hold onto their shares.

It was possible that the OTS could recommend the scrapping of the Company Share Option Plan in order to make the Share Incentive Plan look more attractive. Another possibility was that the OTS might want to combine approved and discretionary share schemes, a move which "could lead to disaster," he warned.

"The plan most at risk is the CSOP. The idea of sacrificing it would be to give more tax reliefs for the other approved plans. So there may be quite a battle to save it," he added.

The Centre was lobbying for changes across the board:

- Reduce the admin burdens in SAYE Sharesave to make it more attractive to smaller companies
- No income tax if share scheme options are exercised on a takeover
- Scrap the £1500 limit on dividend shares in the Share Incentive Plan
- Increase the max £30,000 grant limit in line with inflation for the CSOP
- Extend the availability of Enterprise Management Incentives to venture capital and private equity back companies.

An alternative simplified Eso plan structure might involve:

Broad-based plan

- At least 75 percent of employees must be eligible (instead of 100 percent)
- Share purchases either one-off or monthly at market value
- Maximum investment £4,680 pa from pre-tax earnings (= £390 per month, instead of £250)
- Matching and free share awards to value of £6,000
- No tax charge if contribution or holding period is at least three years

Discretionary Plan

- Can be restricted shares, options or conditional awards

- Exercise price can be discounted or zero
- Max unrestricted value of shares £30,000 over three years or £100,000 if EMI-type conditions are met
- Income tax relief only on the increase in value of shares after date of grant

Mr Hurlston said: "These proposals will be taken very seriously by the Treasury and we will press them when we have OTS tax director John Whiting to dinner with Centre members in April."

David Pett of **Pett, Franklin & Co. LLP** talked about the war against tax avoidance in the UK. Employee share ownership already ran to 300 pages of the UK tax rulebook and there were 70 pages on disguised remuneration alone, but there was as yet no over-arching anti-avoidance provision. "Should we have a clear statutory definition of tax avoidance?" he asked.

Footballers and bankers had avoided paying tax on cash sums by using trusts. Instead of paying bonuses, the company paid into a trust, which then 'lent' money to named individuals, while the loan structure could remain outstanding for many years to come, sometimes never being repaid. "This mischief is extremely widespread and the loss to the Treasury is estimated at £1.7bn," he said. HMRC had gone after Glasgow Rangers in a test case because the trust assets had been earmarked for various employees (the soccer club is now in administration) and the Court of Appeal had ruled that the 'loans' to players should be treated as earnings and therefore chargeable for PAYE and NICs, said Mr. Pett. HMRC had effectively "brought down the curtain" on those who had used trusts to hide money.

The new tax rulebook, which would operate from April 6 was so complex that not more than 30 people in the UK had a thorough grasp of it, said Mr Pett. "Our commentary on the tax changes this year is itself 90 pages long!"

HMRC had been fighting back. Now it wanted companies to pay it money up front when it identified 'high risk' schemes suspected of being used for tax avoidance, instead of waiting years to get binding court decisions.

Dr Marco Cilento of the **Confederazione Italiana Sinidicati dei Lavaratori (**CISL) told delegates about employee financial participation (EFP) in the Italian auto industry. It was the first presentation by a leading Italian trade unionist at a Centre conference. His union confederation, CISL, is one of the largest in Italy and is unusual in that it supports employee share ownership. He and colleagues are trying to get FIAT to introduce EFP into its Italian plants. "If we succeed in introducing an EFP scheme in FIAT, we can do it anywhere," said Marco. "The proportion of capital going to labour is declining. We need to see employees winning a capital increase and EFP is a way of achieving that."

Profit-sharing and gain-sharing schemes were supposed to become a more structural part of wage formation in all Italian companies and a fiscal regime had been established to encourage negotiations which would allow the introduction of performance related payments, he said.

He set out an EFP scheme for FIAT based on ten percent of its pre-tax profits. Had it been applied five years ago, employees would have received significant allocations of shares every year, despite the economic crisis. "A scheme like this would allow employees to accumulate wealth, but it must be financed by the company profits. We have to convince employees that EFP schemes are worth it. The economic and management aspects of this must be combined," explained Mr Cilento.

The **trustee panel session** was moderated by **Kevin Lim** of **RBC cees,** who was assisted by **Brendan Dowling** of **Appleby Global**, **Paul Anderson** of **Bedell Group** and by **Peter Mossop** of **Sanne Group.** The panel revealed that a lot of financial arrangements had been held up in the pipeline as a result of the Disguised Remuneration controversy. Clients had had to be educated about what DR meant. Trustees were in a sense 'Tail-End Charlies' because there were so many issues to explore with clients, while the tax and regulatory authorities lurked in the background. As trusts were being more actively used as warehouses or buckets for equity arrangements, there was still uncertainty, despite the various HMRC clarifications of DR scope and definitions.

Kevin said that last year had been "rough" for trustees, but this year would be better because RBC expected to see a lot more international share plans being set up. Peter said that Sanne Group's investment in overseas offices, such as Dubai, was starting to pay off in terms of international work. Brendan said there had been a lot of growth in Appleby's UK business and its Hong Kong office had made a promising start. Paul said that a lot of small trusts were being set up for SMEs, as the EBT was very much a UK product.

Alasdair Friend of **Baker & McKenzie LLP** discussed latest developments in executive reward. There had been a lot of fiscal tightening because every nation was trying to balance its books. Tax rates had risen and some "inventive" new taxes had been introduced. Tax authorities were stepping up their surveillance of what was going on in the equity reward industry – in Italy all variable remuneration was now taxable and in Denmark employees on temporary assignment there were no longer exempt from 'labour market contributions' on their income.

But France won the prize of hyper-activity on the tax front, coupled with inept introduction of the new rules, he said. Although a withholding tax had been introduced for mobile employees, there was still no guidance on who was responsible for collecting it. Clarification was missing too over the new taxation of trusts. A French Labour Court had ruled that a French employee of an international company was entitled to receive a bonus even though he had failed the performance conditions because they had not been translated into French, said Alasdair.

Martyn Drake of **Computershare** described a worldwide stock purchase plan set up by telecoms giant Ericsson. This plan, which involves 22,000 employees in 100 countries, was joint winner of the Centre's '*Best International Employee Share Plan – 2011'* together with Barclays. Lead adviser Computershare used the latest technology to bring in efficiency savings on a considerable scale. The all-employee plan includes executive and key-man incentive bolt-ons. Rank and file employees who bought one share were offered another matching share to be handed over three years on. Key contributors who bought an Ericcson share would get one given free, plus another matching share. There were net monthly contributions from payroll up to a max 7.5 percent of gross salary.

Martyn said that as new administrator for Ericsson in 2008, Computershare had one "fraught" year in which to get 92 payrolls streamlined, but the company had saved a lot of money as a result of the single system architecture pioneered by Computershare.The danger with some global clients was that they could take administrators over. Ericsson was very committed to its share plan and Computershare had been retained for the next steps in a 'very positive relationship.' The employee plan take-up was 20 per cent, which wasn't bad, but Ericsson wanted 25 percent participation long-term.

Justin Cooper of **Capita Registrars** asked how much had changed in the share schemes world as the economic crisis continued? There had been several changes – 'greed' was being blamed as a cause of the downturn and regulators had started to go after the advisers, not just company boards. The recovery had been muted – some of the big success stories of recent years like Tesco were now feeling the pinch. A Baker & McKenzie survey had revealed a marginal fall in the extent to which FTSE100 companies participate in employee share plans. "However, we at Capita are not seeing any downturn in share scheme participation," said Justin. There was evidence of a move away from SAYE-Sharesave to the Share Incentive Plan (SIP), driven partly be a desire to avoid the accounting charges and also because some SAYE plans were failing to deliver gains to employees due to still depressed share prices. Long-Term Incentive Plans were by far the most popular plan design operated by FTSE 100 companies to incentivise executives – up to 95 percent of leading companies used them. Executive option plans by contrast were in free fall. It was possible that 2012 would see more suspensions of SAYE-Sharesave due to worries about under water options. Another worry was that some performance targets were not being met because of the crisis. On the administration front, there was a move away from 'value for money' towards quality of service delivery, said Justin. Clients were being much more attentive. "We've seen a busy start to 2012 with more companies joining up or amalgamating diffuse share plans. We've also seen some AIM companies installing share plans for the first time, sometimes immediately at flotation" he added.

Martin Osborne-Shaw of **Killik Employee Services** delivered the case for employee financial education. Killik had been building the *Money in Mind* website for two years – why? – because there was a real need for workplace financial education. Financial education was not taught in schools or colleges, despite a massive shift in culture arising from the credit crisis. A case in point was that Martin's daughter, aged 14, did not know the difference between a credit and a debit card. Easy credit was no more; to get a new mortgage one needed a 25 percent deposit. Savings were now a key issue because almost one third of Britons had none and three million more households had become financially unstable since 2007. Almost 14 million British adults had no private or occupational pension, according to a Killik-Money-in-Mind with HR Magazine survey. About half of rank and file UK employees had to go through their 'basics' in mathematics again and numeracy in some areas of local government was very low. Sadly, more than half the company HR professionals polled said at present they had no plans to implement workplace financial education, said Martin. What ought to worry employers was that almost ten percent of employees polled admitted that money worries had led them to have taken time off work.

"HR professionals recognise that there is a line between financial education and financial advice. Share plans have a place in encouraging a savings culture," he added.

David Hildebrandt of **Kirton & McKonkie** and **Eric Smith** of **Consulting Services Support Corporation** outlined global fiduciary best practices in US share ownership plans. The big employee question in the US was now whether people would have enough cash to survive in retirement. Huge sums had gone into 401K plans and there had been a move from prudent man to educated man – witness the number of elderly Japanese who had migrated to

Australia because it was cheaper to live there than back home in Japan. US employee plans were suffering from a "tidal wave" of litigation. Some US plans had failed to recognise significant investment benchmarking and had failed to implement clear corporate governance, controls, procedures and audits in plan documents and plan administration.

Plan participants needed to have a way to diversify their investments to reduce risk, especially when participants were nearing retirement, they said. Most US plans offered only a relatively limited number of individual mutual fund choices and too often the selections offered appeared to relate more to 'relationships' between product providers than to what the best available choices might be for participants.

Michael Whalley of Minter Ellison discussed multinational companies in the Australian environment. European and US plans for the most part were accepted in Oz without requiring major design changes. Due to tax changes, share option plans were threatened. Quite a lot of Oz companies had closed their Esos due to this tax issue. If an employe left his job, he would be taxed even if he hadn't exercised his options. If the options lapsed or were underwater – and unexercised – he wouldn't get his tax back. By contrast, performance plans, typically LTIPs, were popular and doing well because there was no risk to the employees. Exemptions from the Prospectus Directive generally only applied to listed companies, which meant that unlisted companies had a hard time.

***Arne Peder Blix** of **Norse Solutions** had been due to speak on good corporate governance best practice in the design and operation of employee share schemes, but could not attend due to family illness. Any member wanting to see the PDF of his slides should contact Juliet Wigzell at the Centre (jwigzell@hurlstons.com).*

Loch Fyne

Employee ownership flagship Loch Fyne Oysters has been bought out by Scottish Seafood Investments (SSI) in a seven figure investment deal. Thus Scotland's most famous worker co-operative has come to an end. All 105 Loch Fyne employee owners voted in favour of the deal which allows them to keep their jobs.

No dividend will be paid the the employees as part of the sale, though they will have the right to buy share options in the Scottish Salmon Company. Their terms and conditions have been improved.

SSI is a joint venture between private equity investor Northern Link Ltd and The Scottish Salmon Company plc, launched last year with a remit to invest in Scottish aquaculture companies with growth potential. The management of the business will remain with the existing team at Loch Fyne. The company was taken into employee-ownership in 2003 following the death of one of its founders, Johnny Noble (the other was Andy Lane), to give the company stability and to ensure its future in Argyll. Despite doubling in size since 2003, with annual turnover now around £15m, the company's management said it had struggled to secure external investment to expand its export business.

QCA joins Centre lobby

The Quoted Companies Alliance (QCA) has joined the Esop Centre in calling for a significant increase in the practice of share ownership among UK executives in smaller and medium sized companies.

The new QCA guide for remuneration committees stresses the importance of share ownership and revealed that its members want to see much more long-term share ownership within the ranks of company executives.

Most chairmen and non-executive company directors (NEDs) want to see a greater proportion of share awards, rather than cash, in the make up of executive reward and more executive share bonuses to be deferred, said a new survey report carried out for the QCA by Centre member **MM&K**.

This echoes the views of the Centre, whose chairman Malcolm Hurlston said: "Executives in companies across the board need to have more skin in the game. Substantial long-term share ownership is the best way to ensure that top managers take informed sensible risk decisions and do not bet the company on a short-term speculative coup."

Cliff Weight, member of the QCA Corporate Governance Committee and MM&K director, said: "The UK Corporate Governance Code and ABI Remuneration guidelines barely mention share ownership. This is one of the areas where the QCA guide is much better than other guides and much more fit for purpose for smaller quoted companies. It is therefore reassuring that there is strong support from chairmen and non-executive directors for the new QCA remuneration guidelines for share ownership by executives":

- 81 percent of those polled agreed that ownership of significant amounts of shares improves the alignment of executive directors with shareholders.
- 93 percent agreed that long-term share ownership should be encouraged.
- 93 percent agreed that the deferment of part of bonus into shares is a good idea.
- There was quite strong agreement that there should be a formal policy restricting the sale of shares, although there was a significant minority who disagreed with this.

The QCA represents small and mid-cap quoted companies outside the FTSE 350 including those on

AIM and PLUS Markets. There are almost 2,000 such companies, who employ one million people.

The QCA and the Institute of Directors supported MM&Ks survey and encouraged chairmen and NEDs to complete the questionnaire. All survey participants received a free copy of the report. MM&K polled the views of 488 directors – 298 chairmen and 190 NEDs covering 1,300 Board appointments; making it by far the most authoritative survey of its kind.

MM&K think that the standard executive remuneration model is too short-term, does not contain enough equity-based pay and too often has poor linkage of pay and performance. To test this view, the survey asked respondents whether the existing remuneration model is broken. About half thought that the model is broken, but 30 percent thought that it was still OK. The other 19 percent either didn't know or were neutral about the issue.

"Getting consensus to change remuneration will not be easy," added Mr Weight.

Outside the Square Mile, boardroom pay has all but frozen over during the past year, according to the NEDs report, which found that: 80 percent of chairmen and non-executive directors had their remuneration frozen last year and that 78 percent do not expect a fee increase this year.

The full survey results and report costs £200 and can be obtained by contacting Mr Weight at MM&K on 020 7283 7200. If you are reviewing fees for your NEDs or Chairman it is essential reading. *MM&K worked with Hanson Green and Directorbank the leading firms for recruiting Non-Executive Directors, to produce the survey.*

New minister to push Eso in Royal Mail

Norman Lamb, the new Minister for Employment Relations, Consumer and Postal Affairs, carries on his shoulders the hopes of the employee share ownership world for change, starting with delivery of the Coalition's promised minimum ten percent share offer to employees of the re-organised Royal Mail.

Mr Lamb's appointment came as part of the enforced government mini-reshuffle following the resignation of former Environment Secretary Chris Huhne, who has appeared in court, accused of perverting the course of justice over a road traffic offence committed almost a decade ago. This necessitated the promotion of Lamb's predecessor Ed Davey to Cabinet rank as Environment Secretary.

Almost immediately, Mr Lamb announced the appointment of Centre member Graeme Nuttall, partner at law firm **Field Fisher Waterhouse**, as his adviser on furthering the advance of employee share ownership in the UK (*see below*).

Business Secretary Vince Cable said: "Norman's background as an employment lawyer and experience as the Liberal Democrat's Trade and Industry Spokesman make him an ideal replacement. Norman pioneered our policy to privatise Royal Mail and establish employee share ownership in the business so it is fitting that he will be responsible for implementing that policy. I wish Edward Davey well in his new Cabinet role. He has made a fantastic contribution; successfully steering the Postal Services Act through Parliament to secure the future of Royal Mail."

Mr Lamb has been MP for North Norfolk since 2001. Before he entered Parliament he was a partner at Steeles Law where he was the head of the firm's specialist Employment Unit.

Graeme Nuttall's appointment followed the Deputy Prime Minister´s announcement in January of a new Government drive to introduce employee ownership into the mainstream British economy. Lamb is leading the cross-Whitehall work to investigate how Government can support employee ownership. The number of fully employee-owned companies has grown by 25 per cent in two years, from 200 to 250 in 2011.

Graeme is both a solicitor and chartered tax adviser and is head of FFW's tax practice and equity incentives group. He was part of the HM Treasury employee ownership advisory group that helped create the HM Revenue and Customs approved Share Incentive Plan and Enterprise Management Incentives arrangement. He drafted the Employee Share Schemes Bill. He is adviser to the Employee Ownership Association and has taken a leading role in advising on the use of employee led mutuals to transform public services. Graeme is an associate of the Chartered Institute of Taxation, a member of the Share Plan Lawyers Group and a member of the ESOP Centre.

He will work with Government to identify the barriers to employee ownership and help find the solutions. He will make his recommendations to Government in a report to be presented this summer.

Mr Lamb said: "I am delighted that Graeme has agreed to act as the Government's adviser on employee share ownership. His knowledge and expertise in this area will be invaluable in supporting me in this important work. I look forward to receiving his advice on how we can make it easier for businesses to adopt employee share ownership models, which I believe have the potential to change corporate culture and stimulate a new era of responsible capitalism and sustainable economic growth."

Graeme Nuttall said: "This is a great opportunity to give employee ownership business models the prominence they deserve, and to do so on a lasting basis for the benefit of the British economy."

The Department for Business, Innovation and Skills is now seeking views from employee owned businesses and other stakeholders, for discussion with Mr Nuttall, on:
*Specific regulatory barriers or other disincentives to employee ownership
*Whether more can be done to raise awareness of employee ownership as a business model
*Appropriate incentives to facilitate employee ownership
*The most efficient way of becoming employee-owned.
Mr Nuttall's role is advisory, part-time and unpaid and will initially run for three months. Mr Nuttall helps produce the UK Employee Ownership Index, which tracks the performance of UK quoted companies where employees hold at least ten percent of the equity. Those wanting to join the discussion should contact EmployeeOwnership@bis.gsi.gov.uk
For more information on employee ownership models: http://www.bis.gov.uk/assets/biscore/business-law/docs/g/11-1401-guide-mutual-ownership-models.pdf

ABI chief speaks at Centre dinner
ESOP members joined ABI chief Otto Thoresen for the first in a series of member dinners on February 15 at the RAF Club in London. The ABI, which represents through its members 15 percent of all shareholding in the UK, plays a vital role in policing remuneration strategy. Since taking the role Otto has signalled that he will take a much tougher stance to excessive reward for management at the expense of shareholders and pension funds.
The discussion at the dinner centred on how employee share ownership can play a greater role in a system of 'moral capitalism'. All-employee schemes can help to give immediate financial security, but should also go some way to meeting pensions shortfalls over the longer term. To make the most of these gains, it was agreed, the industry needs to encourage employees to have a more sophisticated attitude towards their investments via education programmes.

HMRC attacks soccer EBTs
Rangers Football Club went into administration in an attempt to avoid paying a tax bill of around £50m over the alleged misuse of employee benefit trusts (EBTs) for paying players and other staff.
The move came while Rangers awaited a tax tribunal decision over a disputed bill plus penalties. HM Revenue and Customs believe the club misused EBTs and avoided paying significant sums in tax. The amount HMRC is claiming, including penalties and interest, is believed to be around £50m.
It is believed that large sums were paid into the players' EBTs by the club and then 'loans' were made to them at various intervals.
The club was docked a ten-point penalty in the Scottish Premier League, placing the Ibrox club out of the championship race.
Craig Whyte, who bought the club from former owner Sir David Murray last year, is the club's main secured creditor via a floating charge over its assets.
The Rangers FC Group, the majority shareholder in the club, is prepared to provide further funding for the club on the basis the funding is ring-fenced from the legacy HMRC issue. Rangers engaged a specialist restructuring practice, Duff and Phelps, to assist in finding a solution to the present position. Whyte added: "As a result of that advice, it has been decided to seek the protection of a moratorium from HMRC action whilst a Company Voluntary Arrangement (CVA) proposal is made to creditors. This, if approved by creditors within a month, would minimise any points deduction and allow the club to participate in European football."

Lawson attacks IFRS accounting standards
The real cost to the economy of the flawed International Financial Reporting Standards (IFRS) legacy of Sir David Tweedie's fair value accounting (of which IFRS2 is but an element) needs emphasising, said Centre member William Franklin, partner at Pett, Franklin & Co. LLP.
"The rules of fair value accounting prevented the Irish banks recognising the extent of their bad debts and lulled the Irish government into a false sense of security," Mr Franklin told *newspad.* He backed former Chancellor of the Exchequer Nigel Lawson, who wrote recently in the FT about the flaws inherent in bank auditing: "The IFRS accounting system itself has proved to be damagingly pro-cyclical, and the ability to pay genuine (and genuinely large) bonuses out of purely paper profits, which are never subsequently realised, is at the heart of both the bonuses that cause such public and political outrage, and the reason why bank management consistently does so well when bank shareholders do so badly," Lawson argued.
He was supported by Stella Fearnley, Professor in Accounting at Bournemouth University, who said: "Hans Hoogervorst, chairman of the International Accounting Standards Board (IASB), claims that gross over-valuation of bank assets which led to the crisis, and the market for lemons which followed, had nothing to do with accounting. This is hard to believe when IFRS's incurred loss model forced loan loss provisions down and financial instruments were marked to a suspect market. How much more ostrich behaviour do we have to tolerate from the IASB and the UK accounting establishment before we insist on major change to the whole set up? All

stakeholders should be entitled to believe that audited accounts reflect the economic substance of the entity; otherwise, what is the point of producing them?"

Mr Lawson agreed with the Bank of England's Andrew Haldane who said earlier: "A distinct accounting regime for banks would be a radical departure from the past. But if we are to restore investor faith in banking sector balance sheets, nothing less than a radical rethink may be required."

The festering row over current accounting standards is by no means academic for share plan sponsors and their advisers: the notorious so-called 'D 11' interpretation of accounting liabilities for SAYE-Sharesave schemes means that companies have to expense up front the entire projected lifetime 'cost' when participants leave the scheme, even in the first year.

Mr Franklin added: "The former Tory Front-Bencher Howard Flight once said during a Jersey Centre / STEP event, that fair value accounting/IFRS would have bad consequences like this one day."

A spokesman for the Institute of Chartered Accountants said. "There is a valid concern that fair value accounting which is at the heart of IFRS generally and IFRS2 (although for obscure technical reasons share based payment is not classified by the IASB as fair value accounting) can lead to the overstatement of financial assets in boom times. The problem is that some financial instruments have become so complicated that accounting for them on the basis of their historical costs can also be potentially misleading.

"However, the argument that accounting for them using fair values adds to transparency is highly doubtful. The experience of share based payments and employee share options suggests otherwise."

CONFERENCES

Financial education and Eso: March 29

Companies dedicate huge sums of money to their share schemes, but do they ensure that they get a proper return on this investment? Perhaps not if employees do not fully understand how important a share plan could be in the context of their overall finances.

This half-day workshop will look at best practice case studies where companies have taken steps to ensure employees feel in control of their money at a share scheme offering and maturity. Speakers will describe different financial education products and discuss the line between education and advice. The event will be hosted by the Centre at Computershare's offices in Vintners' Place, London on March 29.

Malcolm Hurlston, the **Esop Centre's** chairman, founder of the Consumer Credit Counselling Service and former chairman of Credit Action will give *an introduction on the importance of financial education.* **Marks & Spencer** *case study: this year M&S had one Sharesave scheme under the option price and another which had grown.* Ann Govier, employee share schemes manager *will outline how communications and education strategies were developed and discuss her approach to executive reward as well as all-employee schemes.* **GlaxoSmithKline** *will present the second case study of the morning*. Stuart Bailey of the **Money Advice Service** *will outline their financial education offering and the future of the organisation*. Martin Osborne-Shaw of **Killik Employee Services** *will run through the findings of their survey of employers and employees on this subject and talk of their online learning product MoneyInMind*. Iain Wilson of hosts **Computershare** will discuss *how share plan administrators could help*. An *open panel debate* will give delegates a chance to quiz the experts and contribute to the debate. Company representatives, share scheme professionals, civil servants & trade unions have already reserved their places - book yours now.

Tickets are on sale for this event at £190 + VAT for plan issuers (£140 +VAT for members) and £250 +VAT for practitioners (£200 +VAT for members).

Jersey: April 27

This year's joint ESOP Centre/STEP Jersey conference on trust issues in employee share schemes will take place on Friday, April 27 from 8:45 – 13:00 at the Royal Yacht Hotel.

The new *IFRS 10 will have an impact on reporting for EBTs coming into effect in 2013*. William Franklin, **Pett, Franklin & Co. LLP** will *run through what trustees must do to make sure they are prepared and give an update on other accounting developments of relevance to employee share ownership*. George King IV of **RBC Wealth Management** will *present an overview of the world economic situation in 2012, covering Europe and the Euro situation, impact of the US economy, China and other emerging markets and ask where growth opportunities can be found for Eso.* Rosemary Marr of **STEP Jersey** will give a *round up of developments affecting the Channel Islands*. Other topics will include: latest regulatory and legislative developments, budget 2012 – what will its impact be & OTS review, HMRC update & EBTs after Rangers.

The conference is CPD accredited for 3.5 hours of professional development by the Solicitors Regulation Authority. Breakfast will be served with registration from 8:45 – 9:15 and a networking lunch will follow the conference from

13:00 – 14:00. Keep an eye out for new speaker confirmations on our Jersey webpage – www. esopcentre.com/event/jersey-2012.

To reserve your space email esop@hurlstons.com - £295 for STEP/Esop Centre members £425 for non-members. For more information or to make a reservation email esop@hurlstons.com or call 0207 239 4971.

Centre-IoD share schemes for SMEs: May 15

A large turn-out of SME companies is expected at the Centre's joint conference with the **Institute of Directors** on **Tuesday May 15** about employee share schemes for small and medium businesses. This full-day conference will take place at the Institute's HQ at 116 Pall Mall in London. Tickets are on sale now for £360 + VAT for members or £460+VAT for non-members - email dpoole@hurlstons.com to reserve a place. A comprehensive agenda will take directors of smaller companies through a step-by-step guide to what employee share incentives could do for their business and how to implement such a scheme. Introductory speeches will be given by **Malcolm Hurlston** and **Roger Barker**, Head of Corporate Governance at the IoD. **Ian Murphie** of **MM&K** will give an overview of *the pros and cons of share schemes*, **Guy Abbiss** of **Abbiss Cadres** will present on *how to design the right plan for your business*. **David Pett** of **Pett, Franklin and Co. LLP** will kick off the session on *EMI with an overview of the scheme and its rules*. **David Craddock** will present *Enterprise Management Incentive case studies* and then **Amanda Flint** of **BDO** will ask *what the options are if a company does not qualify for an EMI plan*. **Matthew Findley** of **Aon Hewitt** will cover *plan implementation nuts and bolts in his presentation*, followed by **Catherine Gannon** of **Gannons Solicitors,** speaking on *how to implement a share scheme without racking up legal costs*. **Colin Paterson** of **RM2 Partnership** will *explain accounting for share schemes* and **Colin Kendon** of **Bird & Bird** will discuss *exit solutions*. **Robert Postlethwaite,** of his eponymous share schemes advisory & legal practice, will run through *the options for using a share scheme in succession planning* and finally **Ron Forrest** will give a *case study of* **Perkins Slade Ltd** *where there is an EMI scheme, a SIP and an element of succession planning to bring the theory to life*.

PARIS: June 21 & 22

A strong speaker line-up is already in place for the Centre's 24th annual conference at the four-star Millennium Paris Opera Hotel on **Thursday June 21 and Friday June 22** 2012. Our negotiated package deal permits members to extend their stay in Paris for up to two more days – before or after - at the same discounted rate that the Centre has obtained. The daily room supplement for double person occupation is only €20, so bring your partner or VFR. The hotel is in Boulevard Haussmann, a stone's throw from the Place de L'Opera (see hotel website at**:** http://www.millenniumhotels.com/fr/fr/millenniumparis/gallery/index.html)

Our Paris speakers include **Joe Saburn** of New York law firm Norris McLaughlin & Marcus. Joe's slot title is '*Shareholders finally get to speak - the practical impact of 'Say On Pay' in the US'*. **Jeff Mamorsky** of GT Law and **David Hildebrandt** of Kirton & McConkie (both USA) will speak on: *Retirement plan corporate governance in the USA*; **Patrick Neave** of the Association of British Insurers: *The new parameters of executive remuneration;* **Alasdair Friend** of Baker & McKenzie LLP: *The use of Employee Benefit Trusts and Disguised Remuneration*; **Sara Cohen** of Lewis Silkin LLP on *a John Lewis type employee benefit trust;* **David Craddock** of David Craddock Consultancy Services on: *The Third Way: Eso is beneficial to all and it works;* **Graeme Nuttall** of Field, Fisher Waterhouse and government share schemes adviser on; *Driving Eso into the mainstream British economy*; **William Franklin** of Pett, Franklin & Co. LLP on; *Share Based Payments Revisited;* **Henri Malosse,** president elect, European Economic & Social Committee and director of the French Chambers of Commerce on: *Employee Financial Participation (Eso) in the French SME sector;* **Prof. Jens Lowitzsch** of the University of Frankfurt: *on the findings of the Pro-employee share ownership project, in which the ESOP Centre has played a major role. Jens will focus on the need for the EU institutions to play a major role in helping SMEs save thousands of jobs by using Eso as a business succession tool* and chairman **Malcolm Hurlston** on; *The increasing involvement of trade unions in employee share ownership.*

Your early registration will secure you two nights accommodation in the conference hotel, as the Centre block books rooms, to make things easy for all.

The package deal prices for this conference (no VAT is charged on fees) are:

	Centre members	Non-members
Practitioners	**£999**	**£1,450**
Plan issuers	**£675**	**£799**

There is a reduced price conference-only option this year, which may appeal to those who have a base in Paris, or who do not require accommodation during the conference.

A few speaker slots remain: If you want to deliver a presentation in Paris, you will benefit from a package deal price reduction, subject to agreed topic content. Practitioner (service provider) speakers, who are Centre members, will pay **£895**, while plan issuer member speakers will pay **£599**. If you want to book a speaking slot at this event, you should do so now. Whether you plan to attend as a speaker or as a delegate, please contact international director Fred Hackworth at: fhackworth@hurlstons.com asap.

DAVOS 2013: The Centre's 14th Global Employee Equity Forum will take place on **Thursday Feb 7 and Friday Feb 8** at the Belvedere hotel. The Steigenberger Group's MD for Switzerland, Conrad Meier, has assured the Centre that service standards at the Belvedere will be impeccable.

Claw back

Lloyds Banking Group stripped 13 executives of £2m worth of bonuses for 2010 in the wake of the scandal over payment protection insurance (PPI). Amid pressure from politicians and the Financial Services Authority, it was the first time a bank used a claw-back option on executive pay packages since the financial crisis. Former ceo Eric Daniels loses 40 percent or £580,000 of his £1.45m award, while four other current and former directors will forgo sums of up to £262,500. A further eight executives, below board level, will be stripped of five percent of their bonus awards, the state-backed bank added. The cut will be made by reducing the amounts already awarded in deferred shares. Bonuses for 2011 will be lower than planned. The impact of the mis-selling scandal, which involved the sale of insurance alongside loans to cover repayments if borrowers fell ill or lost their jobs, cost the bank £3.2bn in 2011, prompting the claw back move. Lloyds said its bonus pool and individual awards for 2010 performance would have been lower had last April's High Court victory for consumers in securing rights to PPI compensation been known about at the time. The retrospective cut in these bonuses may have a deterrent effect in future, making bankers more likely to consider the consequences when they launch new products or do assorted deals.

Bonus Corner

Shareholders at the budget airline **easyJet** voted in favour of its board receiving multi-million pound benefits, despite the objections of founder Sir Stelios Haji-Ioannou. Shareholders voted emphatically in favour of ten executives receiving a bonus of £8m in shares over the next three years – with 97 percent of investors agreeing with the bonus programme. Sir Stelios, who owns 37 percent of the company's shares, has written to Prime Minister David Cameron, accusing the board of lowering performance targets in order to make it easier to attain the share payouts.

HSBC paid 170 of its employees more than $1m in 2011 when the London-based bank made profits of $21.9bn (£13.8bn), an increase of 15 percent. But if $3.9bn of gains on the value of the bank's own debt are stripped out, the profit is actually down $1.2bn to $17.7bn. The profit figures were released along with extensive detail on pay deals for its staff. HSBC was the first major bank to comply with new Treasury requirements to publish the reward of the unidentified top eight highest paid executives, who shared £30m between them.

Under Hong Kong listing rules the bank also published the details of the five highest paid employees which produced a total of £27.7m, reflecting how the UK rules on executives do not always capture the highest paid employees. The highest-paid employee earned $12m.

Chief executive Stuart Gulliver – and other members of his executive team – had their bonuses docked because of the payment protection insurance scandal and the £10.5m fine by Financial Services Authority for the misselling to elderly customers by its NHFA subsidiary.

Even so, his total take home pay still totalled £7.16m, comprising £1.25m salary, £2.16m bonus and £3.75m long-term incentive plan. The bank provided two other methods to calculate his pay, one which showed a fall to £4.2m from £6.1m, the figure the bank announced last year as his total pay. However, the bank produced information outlining all the amounts of previous awards that will pay out in 2011, taking his total pay to £6.6m up from £3.9m in 2010. A year ago under Hong Kong rules, its five highest paid individuals globally received a combined £34.3m while the highest paid got just over £12m. The bonus pool for the investment bankers was down to $1.2bn from $1.6bn while the entire bank's bonus pool was $4.2bn, unchanged year on year.

When HSBC announced that it will cap cash bonuses for UK staff at £50,000 one thing is clear: it should not be interpreted as a sign of bonus restraint. Imagine being a banker expecting a £1m bonus. Under industry-wide rules implemented by the Financial Services Authority the first £200,000 can be paid in cash, £200,000 paid in shares which can be sold whenever the recipient chooses, and £600,000 needs to be deferred and paid out in shares over three years. But despite this so-called £50,000 cap, HSBC will still be able to hand its star players the £200,000 in cash they were expecting. HSBC will issue the employee with shares up to the £200,000 limit, but arrange for them to be sold immediately and the proceeds handed to the employee. HSBC is not alone in using shares that can be turned into cash quickly. Staff at **Bank of America Merrill Lynch** are also being paid in "quasi-cash" as even though the US bank is issuing $1bn (£635m) of shares to pay its staff, they vest immediately.

The regulators are endorsing such methods of payment. It is a complex and awkward way to bolster a bank's capital ratios and dilutes shareholders – yet does not in any way have an impact on staff.

Taxpayer-backed **Royal Bank of Scotland** remained at the heart of the row over bankers' pay as it unveiled total losses of £2bn for 2011 at the same time as paying £785m in bonuses to its staff. RBS, which is 82 percent state-owned after receiving a £45.5bn bailout at the height of the financial crisis, said the bonus pool included £390m for its 17,000 investment bankers, of whom one third are thought to have received no bonus at all. While the total pot is 43 percent lower than the previous year, it follows a period in which the bank announced thousands of job cuts as it scales back its investment arm, Global Banking and Markets. Downing Street insisted the Government was not going to micro-manage RBS, after the waiving of a £1m share bonus (already reduced from £2m) by Stephen Hester, its ceo. John Hourican, head of RBS's investment arm, was said to be in line for a £4.5m shares bonus in April. The PM's spokeswoman said: "These decisions are decisions for the board, in terms of who gets a bonus and what they get. The Prime Minister has made very clear that bonuses should be responsible." She said Mr Hester had made good progress in turning round the Edinburgh-based bank, which was saved from collapse in 2008 by the bail out. The rewards were a "matter for individuals" on whether to accept them or not, she added.

Barclays reported a 32 percent cut in its bonus pool – down to £1.5bn in total - at the investment banking division after a three percent fall in profits to £5.9bn for last year, hit by a slowdown at its investment bank arm. Senior Barclays executives will see bonuses cut about 48 percent, which implies that ceo Bob Diamond will see his bonus reduced to about £3m. Barclays' total bonus pot for the year will now be about £2.15bn, with cash bonuses capped at £65,000. The average bonus payout for a Barclays' employee fell 21 percent year-on-year to £15,200. However, this still drew critical comments from the Association of British Insurers', which lobbies on behalf of some of the UK's biggest investors, the pension funds. Robert Talbut, chairman of the ABI's investment committee, said: "Whilst overall bonus levels at Barclays have been reduced, for Barclays Capital this reduction is only in line with the fall in profit before tax. This appears to be very close to business as usual. It is not the signal of the change required in order to improve the investment case," he said. Barclays, the UK's fourth largest bank by market value, received no injection of state aid during the financial crisis and had previously indicated that it felt under no obligation to cut bonuses.

Lloyds ceo, Antonio Horta-Osorio, said in January he would not take an annual bonus for 2011 after lengthy leave of absence from work due to excessive stress.

Morgan Stanley this year capped cash bonuses for bankers and traders -- who often receive millions of dollars in cash -- at $125,000. **Bank of America** limited its top bankers to $150,000 in cash. **Credit Suisse Group** cut bonuses by 41 percent and **BNP Paribas** Group by about 50 percent while **Deutsche Bank AG** lowered the cash component of its short-term bonus plan by 37 percent.

Network Rail bosses, including ceo Sir David Higgins, have refused their bonuses this year, after coming under political pressure to waive the potential six-figure awards. Sir David, who was eligible for a bonus of up to £340,000, said in a statement that they would be donating the money to a rail safety charity. The government said Network Rail had "recognised the strength of public opinion" over the issue. Sir David, who joined the firm last year, said he took the decision before the row over remuneration broke out. "I and my directors decided last week that we would forego any entitlement and instead allocate the money to the safety improvement fund for level crossings," he said. "I can confirm that remains our intention." Network Rail postponed a meeting at which the bonuses would have been criticised and at which Transport Secretary Justine Greening had said she would vote against the bonus plan. NR, which owns most of Britain's rail network infrastructure, said its board "will take the opportunity to reflect further on how to incentivise performance in the company against the backdrop of the current context". Sir David and six other directors had been eligible to receive up to 60 percent of their annual salaries in one-off performance-related bonuses as well as longer-term bonuses of up to 500 percent after five years if certain targets were met. Downing Street said ministers were not permitted to interfere in the day-to-day running of the NR - which receives £4bn of taxpayer funding a year and is guaranteed by the government. The TUC called for an end to corporation tax relief for pay and bonuses worth more than 10 times average annual earnings (£26,200). The union body claims this could raise around £1.7bn a year if applied to the banking and financial services sector.

News that the **Ministry of Defence** paid out £40m in bonuses to staff last year continued to attract criticism. Retired officers in the Services have written to newspapers demanding that the entire MoD bonus structure should be scrapped as soon as legally possible, in view of the gravity of the nation's financial and economic crisis.

But a lot of rubbish is being written and said about the 'excessive' bonuses phenomenon, claimed

Damien Knight of Centre member **MM & K**. In fact the *median* rise in **total** reward packages of FTSE 100 executive directors last year was ten percent, not the sky-high 49 percent increase as claimed by High Pay Commission boss Deborah Hargreaves. Knight defined total reward as: salary, fixed benefits, annual bonus, and long-term incentives that have matured, where the performance period ends, or options are exercised. Directors' basic salaries only went up by two percent last year, he added. During the past eight years, mean total shareholder return per annum, including dividends, among 66 of these companies was 15 percent, so how could others argue that the directors were not worth their performance-related bonuses, he asked?

Centre chairman seeks to involve UK trade unions

Malcolm Hurlston has written to leading UK trade unionists to highlight the attempt being made by leading Italian union confederation CISL to get employee share ownership installed in the Fiat factories. He wrote to Lord Monks, Brendan Barber, Janet Williamson and the general secretaries at BALPA, Unite, and CWU, enclosing the paper presented by Dr Marco Cilento of CISL - the Italian trade union confederation - at the Centre's employee equity forum in Davos. Mr Hurlston said: "CISL is calling on Fiat to provide an employee share scheme for its members. This is certainly an interesting development: it evidences a growing interest in the topic among trades unionists in some EU member states and offers UK trades unions practical guidance towards a new approach. I am enclosing too the Centre's plan - five points for trades unions - which is also gaining traction."

Cash box company shares subject to Income Tax

Shares awarded to employees in 'cash box' companies as part of an avoidance scheme are 'readily convertible assets' (RCAs) on which an employer must account for income tax under PAYE, a tribunal has ruled. Although transferring the shares was not the same as a payment of money, they fell within the RCA definition because they could easily be sold or converted to cash, the Upper Tax Tribunal said in its decision.

HM Revenue and Customs can collect income tax through PAYE and National Insurance contributions (NICs) from certain non-cash 'payments' made to employees if they constitute RCAs. This prevents employers from avoiding their liabilities under PAYE by providing benefits to employees as shares, other financial instruments or commodities. Taxable benefits provided to employees that cannot be easily converted to cash will still be subject to income tax, but this will be due under the self-assessment regime.

Investment management group Aberdeen Asset Management (AAM) had conceded that income tax was due on the shares following a 2010 tribunal hearing, but had argued that it was the employees' responsibility to account for any income tax due under self-assessment. HMRC argued that the PAYE regime would apply, making it the employer's responsibility to account for tax, either because the shares were the equivalent of a 'payment' or because they were RCAs. The company had used an offshore employee benefit trust to set up offshore companies each with one share in the name of a senior employee as a means of channelling additional remuneration to each employee. Employees were then able to receive benefits from their companies, mainly in the form of loans which were not repaid.

AAM successfully argued that the delivery of the shares in the company was not a payment for PAYE purposes. Mr Justice Warren agreed that, as employees did not have the unconditional right to immediate use of the cash in the company, the transaction could not be considered as equivalent. However the cash box structure of each company, with only one shareholder and no liabilities, meant that the employee-shareholder would be able to extract a value from the company which was the same as the expense incurred by AAM in providing the shares. This meant that they fell within the RCA regime, leaving AAM to account for income tax under PAYE as well as class 1 NICs. The scheme ran for three successive tax years leading up to 2002-03 and would no longer be permitted under the relevant laws according to both AAM and HMRC.

Tax law specialist Matthew Rowbotham of Centre member **Pinsent Masons**, the law firm behind Out-Law.com, said that it was not very surprising that the tribunal had agreed that the shares fell within the RCA definition. "HMRC had put forward an argument which would have significantly broadened how the legislation works as currently understood but the Tribunal refused to be drawn into a substance over form approach. However AAM argued that that the legislation was very much directed at the form, and not the substance, of different benefits and one should therefore pay close attention to the detailed legislation," he said. "This can be seen as a small victory for taxpayers generally – although that may be cold comfort for AAM since they lost overall," he said.

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