Vol 26 No 2 March 2013

it's our business

newspad of the Employee Share Ownership Centre

Static share plan limits 'rough justice,' warns Centre chairman

The UK government has unwittingly discriminated against rank-and-file employee shareholders by refusing to raise their tax-approved monthly and yearly savings limit - at the same time as doubling the options investment limit for high-flyers in smaller companies, Centre chairman **Malcolm Hurlston CBE** told delegates at the 14th annual Global Employee Equity Forum in Davos.

The move was "rough justice" towards ordinary employee shareholders and might yet come to haunt ministers, Mr Hurlston warned delegates gathered in the Steigenberger Belvedere Hotel.

"Despite our reminder to the Treasury that the UK tax-approved individual broad-based share scheme participation upper limit for individual employees hasn't been raised for two decades, the government has signalled no intention to act.

"A glaring discrepancy has emerged, which I hope doesn't come to haunt ministers – while rank-and-file employees still can't put more than £250 a month into tax-protected company share schemes, the investment limit for high-flyers in gazelle like high tech companies has been doubled in Enterprise Management Incentive share option schemes to £250,000. Rough justice, some would say," he said.

Claims by HMRC, that an inflation linked rise in the employee share plan savings limit to (say) £400 per month would benefit only financial sector employees, have been undermined by reports that one fifth of employees in UK utility companies have now reached the £250 monthly share scheme investment ceiling.

The event had a distinct north American flavour this year, with three topic presentations delivered by speakers from the US and a fourth by a Canadian.

Mr Hurlston reported that the Centre had been active on both the domestic and international fronts during the past 12 months. In the UK, the Centre had played a major role in many recent share scheme changes brought in by the Coalition government. These included: inputs to the Office of Tax Simplification programme, leading most notably to the rescue of the threatened Company Share Option Plan (CSOP). Without the recent Centre lobbying campaign, the CSOP, which many members supported in a Centre survey, might well have bitten the dust, he said. In addition, the Centre had held successful black-tie dinners with Otto Thoresen, head of the Association of British Insurers, Tory politician and FT columnist John Redwood and OTS tax director, John Whiting.

The Centre was working with government share scheme adviser, lawyer Graeme Nuttall and with the Department for Business Innovation & Skills, on improving awareness of employee ownership. As a result, the chairman had been invited to join the employee ownership implementation group. On the international stage, it was not an exaggeration to say that the Centre was now the European Union's preferred partner for employee financial participation projects involving the UK, he said.

From the Chairman

The battle about bankers pay swirls around us - not to mention top pay in energy companies. Both are embedded in the public mind as essentially utilities which should offer good service at a fair price undistorted by grandiose reward.

The real sufferers have been rank and file bank staff who were heavy holders of shares in the banks they worked for. Their plight has been largely ignored. Of course employee ownership can never be a one way bet and all lessons are salutary. Still it is time for a sensible survey of outcomes for bank employees to promote understanding and sympathy where it is deserved.

When the time comes for state ownership to be unravelled the case can be made for giving shares to employees as well as to the public, if that is the preferred solution. Currently it is not clear whether or not the unravelling will aim mainly to meet the political convenience of the government of the day. I rather suspect that the claims of both citizens and employees will come a poor second.

Malcolm Hurlston CBE

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

In addition, the ESOP Institute, which shares management with the Centre, would relaunch its ESOP Certificate, announced Mr Hurlston. It would use advanced technology and promised student participation. The ESOP Institute would welcome co-sponsorship proposals lodged by members, he added.

The mood at the World Economic Forum had been less subdued, because the main players thought they can see a glimpse of light, signifying, if not quite the end of the tunnel, at least a way out, said the chairman. However, the social fabric in the southern part of the Euro zone was visibly crumbling, owing to even higher levels of unemployment, greater economic hardship and increasing social tensions. Unemployment rates of more than 50 percent among young people in Greece and Spain - and hardly better prospects in southern Italy and Portugal – had encouraged a mass migration of young job seekers towards the more prosperous zones in northern Europe. The consequences would be severe, said Mr Hurlston: “Employment feudalism is making a comeback in these zones – companies are operating outside the legal framework – offering only low cash wages with no social protection for those employees who fall sick or get injured. No prospect of employee share ownership for them.”

The better news, however, from the Centre’s European collaborators was that companies who had installed employee share ownership, or other forms of employee participation, such as co-operatives, had resisted, on the whole, the great economic recession far better than companies owned solely by distant shareholders.

Tens of thousands of small and medium-sized businesses throughout the EU would face severe succession problems within the next five years, yet most had almost no idea of how to set up an employee share scheme and no knowledge of anyone local to help them.

Mr Hurlston said: “We are hopeful that the UK government will accept the Centre’s offer to help disseminate widely information about employee share ownership among smaller businesses. The European Commission is interested in the role that Eso plans can play in the rescue of these privately-held companies, which otherwise risk being broken up or liquidated with the loss of many local jobs. It’s an issue the Centre team will raise in San Sebastian, in the Basque country, this spring, at a major EU sponsored conference on employee participation and social dialogue. The Centre has submitted evidence about the effects of Eso in the UK social sector, for example Childcare nurseries; the part-privatised civil service pension company and in public health sector mutuals.

“A decade ago, a Centre mantra was that employee share ownership was never intended to replace wage and salary increases, nor indeed pensions. I was painfully aware just how strong union opposition to employee share ownership used to be, even a decade ago. However, the ball game has changed. Years of patient lobbying are bearing fruit. Several large unions are now making positive noises about employee share ownership, especially at local and regional level, though there are still some dinosaurs around. The number one trade union priority within the EU these days - faced as they are by a tidal wave of redundancies - is to help preserve jobs. All else is secondary.”

The qualifying pension age was rising inexorably all over Europe. Many millions of ex-employees now faced near destitution, with only a state pension to rely on. So it was the long-term savings aspect of employee equity, which the Centre and the industry generally had to promote more often and more widely.

“Share scheme tax policy must reflect this drive; tax exemptions should be weighted much more towards longer-term share ownership. In order to increase the security of employee share ownership savings, we might borrow an American idea, copied by the French, of allowing share scheme participants to channel a proportion of their employee share savings into a portfolio of low-risk company shares. In this way, the sudden collapse of the share price of the employee’s company would not be such a disaster for share scheme participants as sadly can be the case at present. In other words, spread the risk,” added Mr Hurlston.

He thanked **Computershare** for having sponsored the conference handbook and brochure co-sponsors **Appleby Global** and **RBC Corporate Employee & Executive Services.**

Alan Judes of **Strategic Remuneration** told delegates that the executive remuneration scene was changing constantly – UBS had just announced a plan to pay its bankers bonuses not in equity but in bonds based on the capital ratios of the bank. If things went badly, the value of the bonds – and their bonuses - could be wiped out. UK Business Secretary Vince Cable had listened to representations about the government’s proposed binding restrictions on executive reward. Now only a 50 percent plus shareholder vote on directors’ pay was necessary to be binding on the company.

In the governance process, performance indicators were being looked at – Earning Per Share (EPS) and Total Shareholder Return (TSR) were not the way forward for all companies. Remuneration policy should promote value creation in line with corporate strategy, said Alan.

The UK psyche on executive remuneration was about ‘hating reward for failure,’ so directors should be liable to make good losses, according to this thinking. However, the ‘single total figure’ disclosure for each director’s remuneration would result in “one big spiky” number - perhaps swelled by a successful vesting of bonus options from previous years, which could look out of place in a poor year for the company, added Alan. Adverse shareholder reaction now made it dangerous for company boards to award executives

consolation bonus awards, even when LTIP targets had been missed by the tiniest of fraction, as Shell had found to its cost. When the executive committee decided to make a discretionary payment of 20 percent to the LTIP participants, the shareholders were incensed and voted it down.

According to **Fred Whittlesey** of **Compensation Venture Group** (US) stock professionals need a new language. Performance based equity reward plans were now a cottage industry in the US, but had they made compensation plans any better? - "The answer is generally 'No'. We are on this train - called 'performance' and we can't seem to stop it," he said.

One problem was that performance plans were so complex, another was that many Silicon Valley type high technology companies, after two or more decades of record growth, just weren't growing any more. A company introducing performance pay (PP) had to ask itself some difficult questions, most notably - should PP cover just five percent of an employee's total pay, or 100 percent? "Take-away bonuses more or less no longer exist in the US: "We don't like 'free' share give-aways, essentially awarded for turning up for work. So we've fixed that, but we've created 19 different problems instead," said Fred. These problems included: 'low ball' objectives, financial measures which didn't support value creation, remco discretion, unnecessary complexity, generous termination provisions and so on. An over-arching factor was that market trading dynamics, coupled with global economic concerns, were muting potential executive impact on share prices anyway, so what was the point? As for performance indicators, the end was in sight for TSR anyway, he mused. Wasn't it time that the US authorities considered factors other than share price, e.g. other stakeholders and environmental responsibility - when setting performance plan rules? argued Mr Whittlesey.

Jeremy Mindell of **Henderson Global Investors,** offered the rule that if executives couldn't understand their own incentive schemes, such schemes were no good at all. In an age of austerity, companies wanted to find ways of reducing the cost of their global employee equity plans. Technology was an obvious port of call – there were software packages, which, for example, calculated corporate liability under the global accounting rule IFRS2. Minimising the accounting costs of Eso schemes made sense, but why was the industry using the Black Scholes accounting method for everything: "Will accounting be the be-all and end-all of employee share ownership?" Mr Mindell demanded

Cost savings could be achieved through ending monthly vestings, while the Share Incentive Plan was proving itself to be a "marvellous" form of redundancy protection, said Jeremy. Changing employee equity arrangements in tough times was not problem-free: a badly framed executive incentive scheme could contaminate all the broad-based Eso schemes in larger companies, he warned. Post-vesting strategy was important and employees could be helped - as they were at Henderson - to diversify part of their shareholdings into other companies, to avoid Enron type situations, he said. Henderson, like some other companies, had a volatile share price, so the danger was, vis-à-vis share schemes, in either under or over-rewarding employees. Should there be a capping mechanism on the share price reference point for share scheme maturities, he asked; "Some companies are looking at this possibility."

Mike Pewton of **GlobalSharePlans** examined ways and means of increasing international employee take-up of employee equity plans. On a practical level, if the plan sponsor had only small numbers of employees in (say) China, it was probably best to pay them the extra in cash, rather than bother with a share scheme, he said. Experience had taught him that enthusiasm was the key success. Mike was handling the first-time launch of employee share purchase plans for three Finnish companies, who aimed at an average global take-up of 20 percent of eligible employees. One of these companies had a lot of employees like crane drivers scattered across countries where, sometimes, share ownership culture was not strong, he explained. Having a consistent communications strategy called for personal visits, named local champions, company buy-in at a senior level, two-way communications, translation of documents, works council consultation and so on. One of the three companies, Outotec, had achieved an international average of 33.5 percent plan offering take-up, which Mike termed "excellent" for a share purchase plan. Going forward, follow-up publicity stories of successful employee shareholders, update meetings and using regulatory issues as a communication tool were equally important. In one Polish Eso offering, the documentation need was so huge and complex, that almost nobody subscribed, he added.

Company Secretary **Tony Llewellyn** and his assistant **Lauren Brown** of Kings Langley based **Imagination Technologies** delivered a case history of the company's hugely successful Eso programmes among its 1250 employees. "Our office is known as Santa's Grotto by employees because they've made so much money though our share schemes," said Tony. "You should see the top of the range cars we've now got in the employees' car park. Giving shares to our employees every six months is very important to us."

The participation rate in the company's Sharesave scheme was more than 60 percent, compared to an industry average of 35 percent. A 2011 SAYE maturity delivered a vesting at £5.30 per share, compared to the option price of 55p. "Our employees saved themselves £659,000 in capital gains, by transferring £2.7m worth of Imagination shares into ISAs within the 90 day allowed period following maturity," he explained.

Although Imagination Technologies had steadily moved away from share options, it still operated on a legacy basis the EMI and a CSOP. In addition, it had a

discretionary employee share plan and a Tax Efficient Employee Share Plan (TEESP), which was a joint ownership scheme. Tony said that Imagination was the first FTSE 250 company to roll out and promote the use of employee share schemes in ISAs.

Employee engagement in the Eso programme was "superb," witnessed by a 98 percent attendance at road shows on four company sites in order to discuss TEESP vesting. Imagination Technology's Indian employees had even demanded a visit by his company secretariat to discuss the share awards.

The company was still expanding, recently acquiring 150 new employees in MIPS on the US West Coast – in addition to 200 other employees already in India and was setting up a share plans portal which would be accessible to all employees worldwide, he added. Asked about Chancellor George Osborne's 'Rights for Shares' pending legislation, Mr Llewellyn replied: "It's not going to work and we don't think that we can go with it."

Michael Bussa, tax partner at **Ernst & Young LLP** in New York, described equity compensation tax issues facing internationally mobile employees and their employers. Tax authorities everywhere recognised that equity compensation was now a great target for raising more revenue - "low hanging fruit" - to plug national deficit spending gaps, said Michael.

Performance based features in equity packages were giving rise to tax consequences, which had not really been thought out, he added. Few realised how many categories of mobile employees there were – ranging from 'traditional' expatriates on long-term assignment, short term assignments under a formal tax arrangement, to business travellers and even commuters, who lived in one jurisdiction but lived in another. "I'm on the road 50 percent of my time and I'm often flying over up to 45 US states in which I need to check that I'm tax compliant," he explained.

A key issue was whether the taxation of an equity award to a mobile employee impacted by the employer company's recharge methodology? Who paid for what – the company or the employee? Michael favoured a change in the accounting methodology for the internal transfer of costs. The tax issues were complex, especially when (say) the parent company was US based, but the employing subsidiary was based elsewhere. Did a trailing tax liability (of which HR departments might be unaware) arise from awards in different jurisdictions? - Was tax withholding required? – Was a tax return filing needed? Mr Bussa said that although the OECD (Organisation for Economic Co-operation & Development) had been studying the possible tax harmonisation of internationally mobile employees (a subject raised at the Centre's previous summer conference in Paris), not much progress had been made to date. As a result the Centre will be inviting Jacques de Sasseville of OECD to meet members in London.

David Pett, partner in **Pett, Franklin & Co. LLP,** commented on recent UK court decisions about tax avoidance on employee shares and other benefits. "It has been quite an exciting time in the courts as HMRC has had to grapple with a number of artificial tax avoidance schemes, none of which involved the acquisition of shares in the employer company, but instead in special purpose vehicles (SPVs)," said Mr Pett. HMRC was still fighting to establish the principle that contributions placed inside such vehicles on behalf of certain employees were classed as earnings and therefore subject to Income Tax. UBS and Deutsche Bank were involved in a little publicised case where more than £100m was at stake in discretionary bonuses. UBS won a ruling that its scheme was not subject to Income Tax because its SPV was controlled by an independent trust. Deutsche Bank lost because it couldn't prove the independence of its SPV trustee. By contrast, HMRC chalked up a court win in its case against PA Holdings with a ruling that dividends paid to employees on forfeitable shares can be taxed as earnings, instead of being treated as dividends, which PA Holdings had wanted.

In the Aberdeen Asset Management case a *money box* company had been set up in the Isle of Man for each employee, who received no cash, but who could activate payment – in shares – through a controlling interest in each company. However, the shares were readily saleable and so the Court of Appeal ruled that income tax should be paid.

The most publicised case involved Glasgow Rangers soccer club, which later went into administration. The club had paid its players by creating not only an employee benefit trust (EBT) but sub-trusts too for family members of the players concerned. HMRC claimed that payments made on loan to players through these structures should be properly taxed as earnings, but lost by a 2 to 1 majority in the First Tier Tribunal. The fact that no arrangements had been made in the trusts for the repayment of the 'loans', nor had any rate of interest been mentioned, made it appear that this was a mechanism by which income tax could be avoided, said David. In his opinion, the majority rulings were "pretty poor," while the dissenting judgement from Dr Heidi Poon had got to the crux of the matter – whether the 'loan' payments were in fact pay, which in her view they were. HMRC had lodged notice of an appeal and was likely to succeed.

Harvey Katz, from the New York office of **Fox Rothschild LLP,** presented a US Esop case history success story. Some 200 employees in a local building supply company collected around $400,000 per head, with more than 30 becoming dollar millionaires, when the Esop was bought out. The employer had made annual contributions of around 20 percent to the Esop to enable it to repay the loan that had helped set it up. The first Esop purchase in the company - a 32 percent

minority - had been financed by the company. "In the US, we have a cottage industry of Esop lenders," Harvey explained.
What made the Esop such an attractive vehicle for acquisitions was that the entire cost of contributions (principal and loan interest) to the Esop was tax deductible. "The holy grail of the US Esop is to become a 100 percent owner of the company, at which point, it can operate tax free," added Harvey. "It's an often over-looked aspect of US tax policy." Furthermore, employee shareholders who sold their stock paid no tax on the proceeds.
"While industrialised countries seek ways of keeping highly paid jobs in the West, it's worth remembering that Esops weather recessions better and retain jobs in the original countries," he told delegates. The one sour note was that the Esop's tax incentives were now under attack and that supporters had to lobby Congress to continue to preserve the tax benefits. Harvey believed strongly that broad-based Esop programmes were the most successful.
Delegates then took part in the Centre's second successive Davos trustee panel session, moderated by **Peter Mossop**, a director of the Jersey based **Sanne Group**. Other panellists were: **Brendan Dowling**, trust director, **Appleby Global**; **Grant Barbour**, partner, **Bedell Group**; **Kevin Lim**, associate director, **RBC cees** and **Mark Healey**, director, **Volaw.**
The recent drama over whether or not trustees had to report to the French fisc details of EBT assets 'owned' by French citizens was symptomatic of a wider problem – the tendency of governments, including the US, to legislate *outside* their borders, said Grant. "We'll see this more and more often: it will be difficult to decide what tax jurisdiction mobile employees fall into," he added. The French threat to EBTs, since withdrawn, had been "clumsy," said Mr Mossop.
Jersey was under pressure to release more and more info. Sovereign states wanted to make people like Jersey trustees their policemen. The threat was: *'If you don't file the reports and pay those taxes to us, there will be consequences for you.'* Panellists warned that lawyers were 'lining up' to help clients recover the contractual rights they had just surrendered in order to grab the share options offered under the Chancellor's new plan. "We've talked to HMRC and they think its crackers," confided one panellist. Delegate **Warren Nash** of **SAB Miller** added: "Mr Osborne is sending out conflicting messages: one is '*We love you so much that we'd like to give you more shares'* but the other message was '*We love you so much that we want to make it easier for us to fire you.'* Another trustee, **Davinia Smith** of **Alter Domus**, said that the 'Shares for Rights' scheme risked tainting the entire share schemes industry - "There is a danger that employees will become sceptical of all share schemes," she said.
Justin Cooper, ceo of **Capita Registrars**, gave delegates an update on the dreaded US Foreign Account Tax Compliance Act (FATCA). He accused the US authorities of having cast a massively wide net in order to catch the tax on money invested outside the US by its citizens. "The key point is that it's going to happen- we've moved from denial to acceptance," he said. "However, we're now starting to see other countries replicating FATCA - as in son of FATCA. There's collateral damage too - the US tax authorities are trying to get at rich Americans who have placed some of their cash in Jersey or Hong Kong, but in doing so, they've caught share schemes too." The FATCA rules were still intrusive, but an inter-governmental agreement (IGA) with the US revenue service (IRS) had at least produced exemptions for SAYE and CSOP schemes, said Justin. "But what about unapproved share schemes, which are not currently exempt - so we face different requirements on different schemes, which is not logical." Nor are EMI options exempt either.
The whole point of FATCA seemed to be whether you could prove that you were NOT a US citizen, he said. What were the implications? - "We don't know yet whether we, Computershare and Equiniti should have to trawl through the millions of employee shareholder accounts which we administer, in order to satisfy FATCA's demands," added Justin.
The UK's Crown Dependencies had said they wanted to sign up to an IGA with the IRS too, in order to 'combat tax evasion' but there was no doubt too that the UK's HMRC wanted to impose such an agreement on the Channel Islands – for its own reasons, Mr Cooper warned.
Stuart Bailey, md of **Accurate Equity UK & Benelux,** discussed Mergers & Aacquisitions (M & A) and the art of equity compensation, accounting and administration. He said the "worry mongers" who had forecast share schemes disaster over the accounting expensing rules had been proved wrong. So when would the recession end? - Well, global M & A was last year still only half what it was five years ago, when the global financial crisis had first bared its teeth. There had been a shift in activity from west to east: the value of deals made in the US had halved, while those in China had doubled. For the first time, the number of Asian companies making acquisitions *outside* Asia had exceeded the number of non-Asian based companies buying companies in Asia. There had been a huge influx of Asian companies into the City of London, added Stuart. There seemed to be some pent up pressure for more M & A in the last quarter of 2012, which had recorded the highest number of deals since Q1 in 2008. A whole string of deals beckoned, including Liberty Global and Virgin Media: US Air and American Airlines; Softbank Corp and Sprint Nexel and Michael Dell and Dell Corp, he added. In the US thee was an estimated $500bn in private equity funds waiting to be spent.
The types of equity being handled in such deals

included: restricted stock units and shares, stock options, Stock Appreciation Rights and equity compensation plans which often contained change in control provisions. So what would happen to Dell's stock plans when Michael Dell bought his company back? asked Stuart. Sometimes the numbers were mind-boggling, such as when Facebook paid $1bn to the 13 employees and nine investors who between them had owned Instagram. Ceo and Instagram co-founder Kevin Systrom took home $400m pre-tax from the sale to Facebook last year, as he had held 40 percent of Instagram's stock.

The looming tide of M & A deals posed challenges for employee shareholders, especially when Asian companies bought European owned ones. He remembered that when Santander Bank had bought Abbey National, for which he had once worked, the Spanish bank "had no history of equity compensation, not even for its executives, and certainly not for its employees." Nevertheless, it would be unwise to get too carried away by increased M & A activity; there had been too many false dawns, added Mr Bailey

Canadian **Don Drybrough** of **Solium Capital** discussed mobility challenges in global share plans. Governments were fighting to get tax money from mobile employees, so increasingly companies would have to account for how and where such employees spent their time, said Don. Tracking mobility was an 'ugly job' – no-one found it easy or wanted to do it – though the number of mobile employees was growing all the time. Workdays in various locations could be identified, but what to do about weekends? In the US, for example, you had to track mobile employees from state to state. "If you work in New York State for more than ten days, you become a taxable event – it's a nightmare," Don explained. Many large corporations had separate departments already just to identify which employees were technically 'mobile' and to track their movements. Definitions of 'mobile employees' might include expatriates, foreign nationals, assignees (an appointee who acts on behalf of another), business travellers, permanent transferees and even telecommuters. The methodology and time use for tracking were very expensive and the temptation for some companies might be to stray close to the borders… say by using smart phone technology to pint-point through GPS where everyone was on a given day. "Companies have the means to do this, but lack the courage to implement strategies like phone surveillance to track mobility, as infringements of personal liberty could be involved," added Don. However, a drive was on in corporation land to make all this compliance and tax data and tracking information accessible in one location by all business units worldwide.

Michael Landon of **MM & K** , the Centre's representative to the Office of Tax Simplification, summarised the OTS reviews and the government's response to the main recommendations. Mike told delegates: "I'm not convinced that the pending changes in share scheme rules will result in a massive increase in Eso in the UK, though the changes will be helpful to administrators and our clients." Although the self-certification of tax-approved schemes would operate from 2014, a lot of companies were "wary" about it, because the precise rules were not yet clear.

Mike praised the Centre for its strong and successful campaign to save the Company Share Option Plan. "The government wanted to get rid of the CSOP, but the Centre helped stop that as CSOP is still popular and some companies like Tullow Oil use it as an all-employee share plan," he said. The moves to allow restricted shares, tax relief following certain cash takeovers and the removal of the 'no material interest' provisions from SAYE and the SIP were good news too. Referring to the government's post OTS review recommendations, Mr Landon added: "This is a start but there is plenty more we can do to improve Eso plan administration and the operating rules."

Back in the late 1990s, the government of the day said it aimed to increase the number of small and medium sized companies (SMEs) using Eso substantially. "Yet when we look at the latest statistics, we see that there has been a big reduction both in the number of companies and individuals participating in SAYE-Sharesave and in the Share Incentive Plan, which began life in the year 2000," said Mr Landon. "The evidence I have examined suggests that although bigger companies are keeping or even extending employee share ownership among their staff, many SMEs have stopped offering them to their employees – full stop." Even the headline number of 7000 companies operating an EMI scheme in March 2011 was suspect, because only 2,500 new EMI options were granted that year, he added.

As for the OTS recommendations on unapproved share plans, Mr Landon forecast that many of the proposals would "change dramatically" in the months ahead, once they had been discussed in more detail. Centre member trustees would be upset by the OTS proposal that 'safe harbour' simple trusts should be created in order to exempt companies issuing Unapproved executive options from having to worry about whether their EBT trustee was UK resident or not. "This proposal is unfair because most of the expertise involved in managing these trusts is offshore based and I did warn the OTS that it would adversely affect the Channel Islands," he said.

Mr Hurlston thanked Mike for his work on behalf of the Centre with the OTS. "We must encourage as many companies as possible to use the CSOP, particularly for the benefit of the low paid and part-time employees, most of whom do not participate in Eso schemes at all," said the chairman. However, the government had refused pleas to extend the EMI

scheme to venture capital and private equity backed companies.

Alasdair Friend of **Baker & McKenzie LLP** spoke about the tax attack launched by France and other EU governments on employee equity arrangements. The more than doubling of employer social contributions to 30 percent on qualified options granted after last July by the French was a big change, Alasdair conceded. The recent piecemeal attacks had created a "complete shambles," which had created an increased compliance burden for companies that had issued employee equity instruments in France. All EU jurisdictions wanted more reporting - more scrutiny and account information - on this front. As the once favourable tax breaks for employee equity get abolished one by one, it made sense for companies to move towards more simple and single equity plans, he said. More generally, the Hollande regime's aggressive tax changes on personal income and wealth had prompted a number of companies to approach Baker & McKenzie for help in relocating senior employees from France to London or Belgium, added Alasdair.

Finally, **Kevin Lim** of **RBC cees** and **Michael Sterchi** of **KPMG Switzerland** delivered a Swiss perspective to executive compensation and private pensions. There was a clear trend towards increases in base salary and decreases in equity compensation in Switzerland, said Mr Sterchi. As for the equity elements, 26 percent was paid on average in shares, 30 percent in options and 37 percent in performance share plans, the benchmarks for which depended upon either (or combination of) share price, economic value added, total shareholder return or return on equity, he said. More than 80 percent of Swiss companies deferred equity payments to executives, generally for at least three years. For Swiss executives, at least 60 percent of their variable pay had to be deferred for between three and five years and it was subject to forfeiture (claw back).

As there were now 36,000 expatriates, working or retired, living in Switzerland, the Qualifying Retirement Overseas Pension (QROP) was something they should look at, said Kevin. Contributions were tax deductible, they were exempt from corporate income and capital taxes, but subject to stamp duty and a 15 percent withholding tax. Tax savings of up to 12 percent were available on social security contributions. QROPS would become more and more common as the number of international mobile employees grew, forecast Mr Lim.

Diary Dates

DAVOS 2014: The provisional dates for the Centre's 15th Global Employee Equity Forum are **Thursday Feb 6 & Friday Feb 7.** Once again, this very popular event will take place in the Steigenberger Belvedere Hotel in Davos Platz. More details will be circulated later this year. Please enter these dates into your diary and obtain advance budget clearance, based on pricing at a roughly similar level to last month's conference.

Share schemes bonanza at Tesco

More than 147,000 staff from supermarket giant **Tesco** received cash and shares totalling £91m from the group's employee share schemes. About £34m was paid out to staff under the supermarket's 'profit share' scheme: staff are given shares in the group - to be held for three years - after which they can be cashed in or reinvested. On top of that the group is giving £57m of free shares to employees as part of its new *Shares in Success* scheme. Under this scheme, staff who have worked for the group for more than a year receive shares, worth 3.6 percent of their salary, which have to be held for five years before they can be sold. The Tesco website explains: *"We give free shares to everyone who's worked here for one year at the end of the financial year (February). We share a proportion of our profit amongst our staff, based on salaries. These Tesco shares are held in trust for five year, and after that you can take them, tax-free."*

In addition, Tesco operates a Buy As You Earn share scheme: "*After three months working with us you'll have the chance to join the BAYE scheme. You buy shares at the market price every four weeks, saving tax and National Insurance on the salary you use to do this. You can start, stop or change the amount you invest at any time. If you keep the shares in trust for five years you'll get even more tax advantages."*

Tesco has a Sharesave scheme too*: "Every October those people who've been here a year get the option to save up to £50 every four weeks for either three or five years and receive a tax-free bonus at the end. You can use your savings and bonus to buy Tesco shares at up to 20 percent less than the market price, or take the cash."*

Pamela O'Brien, 56, who has worked at the Baguley Tesco Extra store in Manchester for 13 years, is using the £40,000 she has saved through the profit share and SAYE Sharesave schemes towards buying a villa in Spain, where she plans to retire with her husband. Melanie Evans, 30, who has worked at Tesco Extra in Bridgend, south Wales, for 12 years, plans to put her £6,000 payout towards her wedding in Las Vegas in September. A company spokesman said: "The continuing success of Tesco is down to the loyalty, commitment and sheer hard work of our people. Profit share and the new *Shares in Success* schemes are our way of saying thank you to them. It is also a great way for staff to invest in the company - as over 100,000 of them now do."

Centre Awards 2013
Entry forms for the Centre's *'Employee Share Ownership Plan of the Year'* Awards 2013 can be downloaded from the Centre website: www. esopcentre.com/awards-2013. The awards are divided into three categories, large (more than 1500 employees) and smaller companies respectively and thirdly, best plan communications. In addition, this year, an individual award is under consideration, chairman Malcolm Hurlston CBE, told the Centre international committee, meeting in Davos before the conference. A possible title for the new award is '*Share Plan Personality of The Year'* and the Centre would like to see such an award sponsored. Mr Hurlston will announce the finalists for all the awards at the Centre's 25th annual conference at Le Meridien Hotel in Barcelona (see below) on **Thursday June 6 and Friday June 7.**

Is Entrepreneurs' Relief a Budget target?
Cancelling Entrepreneurs' Relief (ER) should be considered by Chancellor George Osborne as a serious option in his Budget on **March 20**, said the **Institute for Fiscal Studies** in its annual 'Green Budget' Report. Such a move would create consternation in the upper reaches of the executive remuneration industry as only recently it was made much easier for holders of Enterprise Management Incentive share options to cash them out under the lower ER rate. Higher tax intake was necessary because the government had borrowed £65bn more than it planned in the 2010 fiscal consolidation, as the recession had turned out to be worse than had been hoped, the report said. The Chancellor had chosen not to cut spending or raise taxes in the current parliament, but a mix of tax increases and welfare and spending cuts would be needed in the next parliament, the IFS warned. It suggested that a Government committed to progressive taxation might decide to increase the main rates of income tax by a penny - this would raise more than £5bn, mostly from the better off. Increased council tax for expensive properties, removing the CGT exemption on death, cancelling Entrepreneurs' Relief and restricting the tax-free lump sum from pensions are discussed too. However, corporate tax receipts had proved robust and there was little evidence of a downward trend, despite concerns about corporate tax avoidance, said Centre member **Deloitte**. For the full report see www.deloi.tt/Xdl5WJ
The **Finance Bill** and explanatory notes will be published on **Thursday March 28**, the day before Good Friday and two days after the Commons goes on Easter recess - MPs return on April 15.

Ambitious action **to facilitate share buy backs**
The Department for Business, Innovation and Skills (BIS) published its response to the consultation it undertook on various proposals around share buy backs in autumn 2012 as part of its response to the *Nuttall Review*. BIS asked for views on proposals to: lower the requirements for shareholder authorisation of off-market buy backs of a company's own shares from special resolution (over 75 percent approval) to ordinary resolution (50 percent); allow private limited companies to pay for its own shares by instalments; and allow private limited companies to hold shares it buys back in treasury and to treat them as treasury shares. The majority of responses supported these proposals and secondary legislation will now be enacted to make the necessary changes to the Companies Act 2006.
All of the above changes will make it easier for private companies to operate an employee share scheme with an internal share market. Graeme Nuttall of Centre member FieldFisherWaterhouse said: "The announcement shows the Government is prepared to back its many recent words of support for employee ownership with ambitious action."
The Government's response can be read in full here: http://tinyurl.com/b28ucsw

HMRC defeated over tax clawback
A recent First-tier Tribunal judgement has thrown the spotlight on the tax treatment of earnings paid in one tax year and which are later clawed-back after triggering a clause in the contract of employment, said Centre member **Pett, Franklin & Co. LLP**. If HMRC accepts the analysis in the judgement, it would pave the way for those employees, typically those in finance houses regulated by the FSA, whose annual bonuses are awarded subject to the potential 'malus' clause to claim tax relief, if they suffer claw-back.
Such a provision usually says that the employee will be required to forfeit all or part of a received bonus, if conditions relating to the conduct and performance of the company, business or individual concerned are not met.
Typically, these cover not only the discovery that the facts on the basis of which the bonus was quantified and paid were incorrect, but also a subsequent failure to achieve anticipated levels of minimum performance or conduct said partner David Pett. "Contrary to HMRC's contention, there is no requirement that such negative Taxable Earnings (TE) has to have arisen in the period of the employment. In the present case it arose after the employment had ended. HMRC had, until now, asserted that the application of relief under s128 is restricted to circumstances in which an employee, in effect, shares in a loss of the employer, for example, by a cashier being required to make good a shortfall in the till. (The examples given in HMRC's Employment Income Manual are not correct – they appear to refer to situations in which it is doubtful if the individual is even an employee!). The Tribunal declined to comment on the NICs implications of the decision.

"It would now appear that an employee who is required to, and does pay back all or part of a bonus in line with a claw back provision in the employment contract may claim relief under s128 ITA 2007 for the amount by which the amount repaid exceeds the amount of positive taxable income in the relevant year. HMRC's view that s128 is more restrictive in its application is incorrect. It remains to be seen if HMRC will, in such circumstances, refund the employee's and employer's NICs on the amount repaid.

"If shares awarded subject to such a claw back arrangement have increased or fallen in value at the time when some or all such shares are transferred back (typically to an employees' trust), what is to be taken as the amount or value to be deducted in determining the taxable earnings of that year and, if it be the case, what is the amount of 'negative TE' for which loss relief would be available?

"Notwithstanding the comments of the Tribunal mentioned above, it is unclear what would be the amount concerned. Is it: (a) The value at the time they were first received as earnings of the employee; or (b) The value at the time of transfer back of such number of those shares as are later forfeited or transferred back.

"If, as the judgement suggests, it is a reversal of what had constituted earnings, the correct answer might be (a). In fairness, the Tribunal did not consider the application of the principle to such share-based awards. In any event, care is needed as HMRC might contend that s128 relief is inapplicable where such an award is made under a plan which, by its terms, is expressed to be outside the scope of, and in addition to, the employee's entitlements under his employment contract," added Mr Pett

CONFERENCES

Jersey: April 19

This year's Centre annual seminar for trustees, held in association with the STEP Jersey branch, takes place on the morning of **Friday April 19** at the Royal Yacht Hotel.

Topics tailored towards an audience of trustees administrators and trust lawyers will be covered by expert speakers, including: a review of recent tax and legal developments from **Graham Muir** of Nabarro; a presentation on the impact of the new employee shareholding vehicles on the use of Employee Benefit Trusts from **Barbara Allen** of Stephenson Harwood; **Jim Wilson,** of Ernst & Young, updating delegates on the *EBT Settlement Opportunity;* and **William Franklin**, Pett, Franklin & Co. LLP unveiling new opportunities for SIPs after the OTS review. **Helen Hatton**, Sator Consulting, who developed Jersey's regulatory regime, will speak to whether we have forgotten the *raison d'etre* of employee share ownership; **Rosemary Marr**, STEP Jersey & Nedbank, will address topical trustee issues including foreign asset/foreign account reporting requirements; and **Malcolm Hurlston** CBE, chairman of the ESOP Centre**,** will offer a tour d'horizon.

Attendance prices are £295 for Centre members and £425 for non-members. Register for this event now.

BARCELONA: June 6 & 7

A minister in the Catalain government and the new chairman of the EU Economic and Social Committee have been invited to give keynote speeches.

Two major issuer international share plan case histories will share the limelight at the Centre's 25th annual conference at the five-star Le Meridien Hotel, La Rambla, in central Barcelona, on **June 6 & 7**.

Anne Walsh, share plans manager at medical technology manufacturer **Smith & Nephew,** will discuss the FTSE100 company's innovative international Sharesave plans, alongside **John Daughtrey** of Smith & Nephew adviser **Equiniti.**

The second case history will see **Kay Ballard**, share plans manager at **Kingfisher plc,** outlining the problems the retailer faced when it decided to bring the management of its share plan administration in-house. Sharing the lectern with Kay will be **Peter Leach** of Kingfisher adviser, **Killik Employee Services**. More than 30 people have already registered for this event.

Other confirmed speaker slots include: **Arne Peder Blix** of **Accurate Equity**; **Patrick Neave**, of the **Association of British Insurers**, who will update delegates on its beefed up executive compensation code; **David Craddock** of **David Craddock Consultancy Services,** who will answer the key question – *Does employee share ownership work commercially?* **Jim Wilson** of **Ernst & Young,** who will discuss tax battles between HMRC and EBTs; Barcelona-based **Mike Pewton** of **GlobalSharePlans** on Equity Plan Communications**; Ray Coe** and **Ian Murphie** from **MM & K** will discuss pitfalls in executive compensation plan design, while **Alasdair Friend** and **Narendra Acharya** (Chicago office) have entered the lists in **Baker & McKenzie LLP** livery, with their topic – *Managing share plans after cross-border takeovers.* **Sara Cohen** of **Lewis Silkin** and **Grant Barbour** of **Bedell Group** will discuss whether this is a historic moment for both tax approved and unapproved employee equity plans in the UK in the context of the major pending legislative and regulatory changes. There is yet more in our bumper programme – executive compensation presentations by **Joe Saburn** of **Ogletree Deakins**, one of the biggest US employment law firms and from **Leslie Moss** of global consultants **Aon Hewitt**; plus **William Franklin** of **Pett, Franklin & Co. LLP**. In addition, Centre international director **Fred Hackworth** will moderate a delegates' open debate. The preliminary agenda can be reviewed on the Centre website at: www.esopcentre.com Few speaking slots remain to be filled. Would-be speakers for this high profile event should contact Fred or David Poole asap email: esop@esopcentre.com. Speakers qualify for a substantial reduction (from £995 to £860 with no

VAT) in the Centre's two nights half-board accommodation plus conference package deal attendance fee. Readers can register online, or by e-mail, for delegate places too.
Thank you to **Appleby** and **Bedell Trust,** co-sponsors of the Barcelona 2013 e-brochure. Take a look at www.esopcentre.com/event/barcelona-2013/

New member
The Centre is pleased to welcom **Ingen Partners** into membership. Ingen Partners is a specialist recruiter for Company Secretaries and Share Plan professionals. Prior to setting up Ingen Partners John Roundhill was a Director at Capita Registrars for many years and has significant personal experience and insight into company recruitment. Ingen Partners works closely with clients in order to provide the best long term fit for their business. The success lies in focusing on technical expertise to match the personal fit and corporate needs and Ingen Partners are now established as the Number One recruiter in Share Plans and have helped many of the UK's largest companies to improve the structure and operation of their teams.
Contact: John Roundhill - john@ingenpartners.co.uk, 01732 700322 or 07720 882356
see www.ingenpartners.co.uk.

Employee owned companies outperform
Companies in the UK Employee Ownership Index (EOI) outperformed the FTSE All-Share in the first nine months of 2012. Employee owned companies' share prices were, on average, up 5.4 percent, compared to the FTSE All-Share companies' share price index, which went up by 4.9 percent. The EOI, published by Centre member law firm **Field Fisher Waterhouse (FFW)**, slightly under-performed the FTSE All-share in Q3 of 2012; EOI shares were up 3.4 percent, whilst the FTSE All-share index rose 3.7 percent. However, over the long term, companies in the EOI outperform FTSE All-Share companies by an average of ten percent each year since the EOI began. The EOI monitors the share price performance of listed companies, comparing the performance of FTSE All-Share companies with companies that are more than ten percent owned by employees. An investment of £100 in the EOI when the index began in January 1992 would, at the end of September 2012, have been worth £661**,** whilst the same investment in the FTSE All-Share Index would only be worth £244.
Graeme Nuttall, who heads the equity incentives team at FFW, is the government's independent adviser on employee ownership policy and author of *'Sharing Success: The Nuttall Review of Employee Ownership.'* He said: "The EOI continues to play an important role in demonstrating the benefits of employee ownership. The share prices of companies in the Index are higher over the long term than FTSE All-Share companies. The Index should encourage more listed, as well as private, companies to look at employee ownership as a means of achieving growth." There were two changes to the EOI in the quarter which have retrospective effect and which improve the index performance to date. One company has been excluded from the EOI due to uncertainty as to whether its employee benefit trust is for the benefit of its employees or the employees of a connected company. Another company was found to meet the qualifying conditions for the EOI and consequently it was retrospectively added to the Index.

Bonus Corner
EU agrees to cap bankers' bonuses
The European Union has agreed a provisional deal which would cap bankers' bonuses to a maximum of one year's basic salary, but can rise to two year's pay if there is explicit shareholder approval. The bonus limit is part of the Basel III rules which also include introducing higher capital requirements for banks.
The UK has fought long and hard against Basel III as the rules are seen as presenting a threat to the competitiveness of the City. Boris Johnson said: "This is possibly the most deluded measure to come from Europe since Diocletian tried to fix the price of groceries across the Roman Empire." The City argues that the restriction on bonuses would drive talent away from London to other global financial centres.
David Cameron said that the EU rules need to be flexible enough to allow UK-based banks to compete, "We need to make sure that regulation put in place in Brussels is flexible enough to allow those banks to continue competing and succeeding while being based in the UK."
The agreement reached on February 27 means that the rules could come into force as soon as January 1 2014. The final EU vote is due in May this year.
The Federation of European Employers (FedEE) immediately claimed that the agreement to curb bankers' pay exceeded EU powers.
FedEE secretary-general Robin Chater, a former adviser to the European Commission, said: "What EU negotiators have failed to appreciate is that such an action is beyond the powers vested in the European Union under the EU Treaty. Article 153 (5) of the treaty clearly states that EU legislative powers shall 'not apply to pay'.
"Furthermore, even if the council's powers were not challenged in this matter, financial institutions would remain free to increase base salaries to reward and retain key staff."
"Many EU states have long coveted the City of London's success as an international financial centre and regarded high bonus payments as its Achilles heel. This measure is therefore no more than an attempt to exploit the current vulnerability of the City

by riding on the back of the collective jealousy of bankers' pay in public opinion and the recent downgrading of the UK's international credit rating."

Speaking on BBC Radio Four's Today programme, Alexandra Beidas of ESOP Centre member **Linklaters** said: "The European Commission has been very careful to word this so that it's not a cap on the absolute amount you can pay bankers, it's set by way of a ratio, so there's a ratio between salary and bonus and they are comfortable that this is legal."

"Banks have been very concerned about it for a long time and there had been hope that this would be watered down considerably. I think the UK will be happy that they have been able to secure some kind of carve-out here. I understand that long-term deferrals may be outside of the cap or may be subject to a slightly different cap."

This means that share-based payments which do not vest for several years may be weighted lower than other forms of reward, allowing bonuses worth more than a year's salary if they are paid as LTIPs.

"Bankers are very mobile" Alexandra remarked "They can easily move to the US or Asia where these caps are not in place. One of the arguments the UK put forward was why don't we have this applying only to banks within Europe but not US banks operating in Europe, not Asian banks operating in Europe." However, as it stands the rules will apply to non-EU banks operating in the EU.

It is expected that this move will increase basic pay so that the one times pay matching could be worth more, however this will increase fixed costs for banks, so would not be a sustainable solution.

Europe's tough rules to curb bank pay fly in the face of efforts to stabilise the financial system and would drastically limit shareholders' power over boards, the **Confederation of British Industry** warned. The powerful UK employers' group condemned what it termed 'worrying' talks in Brussels over plans to ban bonuses larger than base salaries and pass what would be the toughest pay restrictions in the world. An informal paper circulated by British diplomats warned that setting a tight ratio between bonuses and pay would lead to higher salaries, not lower remuneration.

Katja Hall, CBI chief policy director, said: "These are worrying discussions because a move away from variable to fixed pay is in complete contrast to what we're trying to achieve, to ensure that pay properly reflects performance. This would take the power to hold companies to account out of investors' hands, by removing tools such as voting on pay policy and implementation, and on board selection. Such a move would fly in the face of financial stability, by removing companies' ability to quickly respond to a downturn by adjusting pay," she added.

The CBI added: "We are concerned that this could be the thin end of the wedge, with Europe trying to expand this legislation to apply to businesses more generally, which could damage stability and growth."

The ceo of **Barclays** bank, Antony Jenkins, waived his bonus for last year – thought to have been worth around £2m. He said it would be wrong for him to receive a bonus, given what had been a 'difficult' year. He took over as ceo last August, just as Barclays was being rocked over payment protection insurance and interest rate swaps mis-selling scandals and other issues. He said in a statement: "The year just past was clearly a very difficult one for Barclays and its stakeholders, with multiple issues of our own making besetting the bank. I think it only right that I bear an appropriate degree of accountability for those matters and I have concluded that it would be wrong for me to receive a bonus for 2012 given those circumstances." He had been in line to receive about £2 of a potential maximum entitlement of £2.75m. Mr Jenkins' total potential pay package, including pension and incentives, was £8.6m, of which £1.1m was basic salary. FD Chris Lucas and Rich Ricci, head of corporate banking, had already given up their 2012 bonuses in the wake of the Libor scandal. Barclays hit trouble last June, when it was fined £290m by British and US regulators for attempted manipulation of Libor and Euribor interbank rates between 2005 and 2009. The scandal sparked the resignations of three Barclays senior board members, including ex-ceo Bob Diamond. He was replaced by Jenkins, who was formerly head of retail and business banking. Barclays has set aside £2bn to compensate customers for misselling payment protection insurance.

Mr Jenkins' move piled pressure on Antonio Horta Osorio, ceo of **Lloyds Banking Group**, in line for up to £4.4m in bonus payments, despite having to put aside ever-increasing sums to cover the PPI scandal and its subsequent compensation payments to customers. However his bonus pay-out may be delayed until Lloyds' share price is consistently above 74p – what taxpayers paid for them when Lloyds was bailed out in 2008.

Stuart Gulliver, ceo of **HSBC,** has already forfeited part of his bonus in the wake of the $1.9bn settlement over US charges for money laundering on behalf of Mexican drug cartels.

Stephen Hester, ceo of state-owned **Royal Bank of Scotland**, announced last summer that he too would not take his 2012 bonus, which could have been £2.4m on top of his £1.2m salary, amid customer anger over an IT glitch which stopped many thousands of RBS group clients from using their credit cards or getting money from cash points.

However, Mr Hestor should not have to cancel his bonus in light of the Libor rate-fixing scandal, Sir Philip Hampton, the bank's chairman told MPs. RBS was fined £390m by UK and US authorities, which it said it would pay from past, current and future bonuses. Hester is due to receive a deferred shares bonus of £780,000 this month. Sir Philip told the

Parliamentary Commission on Banking Standards that Mr Hester's pay was "well below the average in world banking. Relative to other people doing these jobs his pay has been modest". Mr Hester receives a basic salary of £1.2m. For the Libor scandal, where RBS traders colluded with others to try to fix the benchmark Libor lending rates between 2006 and 2010, the UK's Financial Services Authority issued a fine of £87.5m, and another £300m will be paid to US regulators and the US Department of Justice.

Andrew Tyrie, chairman of the **Commission on Banking Standards**, said he was not convinced by the statements given by Sir Philip and Mr Hester before the commission. "We were not given sufficient confidence that the arrangement for funding the fines from bonuses will do what it says on the tin," said Tyrie. *"This must be more than an exercise in creative accounting. It would be all too easy to artificially adjust a bonus pool, the size of which is yet to be decided.*" Mr Tyrie challenged Mr Hester on whether his reward package should be cut over the Libor scandal. Mr Hester replied: "I think that my bonus should be assessed on all of the things I do well and badly and judgment should be reached in the round. If you look at the RBS that we took on four years ago or so, you'll see that we have done huge things to rescue a situation for the company and for society and for its shareholders, which included hundreds of billions of pounds of risk that the country was exposed to, which it is not exposed to any more."

Commerzbank, Germany's second-largest bank, slashed bonuses for 2012 as a result of "unsatisfactory net profit". The lender said pay would be 17.2 percent lower than in the previous year. Ceo Martin Blessing, waived his bonus claims - a decision which the company's chairman described as "honourable". It followed a loss of £616m for the fourth quarter, as well as an increase in the money set aside for bad loans. The bank is in the process of restructuring its business which will involve the loss of almost 6,000 jobs by 2016. Mr Blessing said: "In 2012 we fulfilled the prerequisites for the realignment of the bank. Initial measures are taking effect, but one thing is clear: there is a long way to go."

The **Federation of European Employers** called for an end to 'Banker Bashing.' Its secretary-general, **Robin Chater,** said: "I cannot help feeling that much of the animosity has arisen from popular envy about the salaries and bonuses received by many senior bankers and stock market traders. What their critics fail to understand is that such rewards arise from the huge risks that those in such positions are required to take. Without such rewards there would be a much greater risk that people supervising so much money would turn to bribery and fraud – and the integrity of the system would be lost. The best measure that governments could take would be to strengthen the regulatory system and otherwise support financial institutions to carry out their critical role in sustaining the UK economy." Centre chairman Malcolm Hurlston tagged this an unfortunate intervention. "Surely the least we can expect from professional bankers is immunity to bribery and fraud."

Tobin Tax

On February 14 the European Commission adopted a proposal for a European Council directive implementing enhanced co-operation in the area of Financial Transaction (Tobin) Tax, said Centre member **Deloitte**. The approach of taxing all transactions with an established link to the FTT-zone is maintained, as are the rates of 0.1 percent for shares and bonds and 0.01 percent for derivatives. This draft does introduce some exemptions, but broadens the scope so that now a financial transaction is not only on a residency basis (i.e. if one of the parties is in one of the 11 participating countries), but in addition if a security is issued in one of those countries.

See www.deloi.tt/VU05Go.

France unilaterally revoked a concession that allowed some French exiles in Switzerland to pay only 15 percent withholding tax on dividends received from France, said lawyers *Mossack Fonseca*. The change, gazetted in France's official journal, affects the estimated 2,000 wealthy French individuals taxed under the Swiss lump-sum tax system. Under this system they pay a fixed tax charge based on the rental valuation of their property, irrespective of their income or wealth. Since 1972, French citizens in Switzerland who elected to pay Swiss taxes under the lump-sum system have been able to receive income from their French assets, taxed in France at only 15 percent. The concession was set out in a directive linked to the Franco-Swiss double taxation agreement, and French beneficiaries of the lump-sum system only needed residence certificates from the Swiss authorities in order to invoke it. Despite the official nature of the concession, the Swiss federal finance ministry only found out that France had rescinded it when they read about it in the newspapers. The Finance Minister of the Vaud canton, home to many wealthy French tax exiles, called it 'another declaration of war by the French'.

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