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it's our business

newspad of the Employee Share Ownership Centre

Davos: employee share ownership - engine for growth

Broad-based employee share ownership is now a key corporate tool in near zero inflationary Europe because many companies were seeking alternatives to annual pay rises, Centre chairman Malcolm Hurlston CBE, told delegates at the Centre's 16th global employee equity forum in Davos.

Companies could sweeten the bitter pill of cancelled pay rises by offering their rank-and-file employees the prospect of future gain via participation in more tax-approved employee share schemes, said Mr Hurlston, opening the two-day forum at the Hotel Seehof in Davos Dorf.

He built on a speech given by Alan Judes at the Centre's conference in Rome last year, who said that cash-strained companies needed share plans designed for them because they could not afford to pay their employees more, as it would affect cash flow, add on NICs, pensions and other benefit costs dependent on salary rates.

The chairman told Davos delegates: "As price inflation falls to near zero in Europe, it becomes much harder for companies to justify continuing to pay annual pay rises to their rank-and-file employees. Large retailers have been among the first to suffer as sales revenues and margins are eroded.

"In this climate, broad-based employee share ownership (Eso) is becoming a key corporate tool, because it enables companies to sweeten the bitter pill of cancelled pay rises.

"Most employees now understand that bigger and better employee share schemes offer them the prospect of long-term gains in the form of matured share options or deferred shares in their employer. How much better to give employees at least the hope of gain, albeit delayed, rather than nothing at all." If profits went down, pay-outs from Eso awards could be cut back too, sometimes avoiding the need for redundancies, added Mr Hurlston.

The Centre had launched discussions with officials from the Organisation for Economic Co-operation & Development (OECD) in an attempt to establish whether or not it can intervene in an attempt to rationalise what many now considered excessive annual regulatory annual share scheme reporting demands. "The blitz of regulatory demands confronting the share schemes world is just one example of the kind of OTT regulatory regimes which many business sectors, especially financial services, now experience throughout the western world. While pay-back for the crisis of 2007-8 is understandable, what we are now seeing has gone way beyond what is required for safe and secure share scheme operation. The expense required to remain compliant is so great that smaller service providers could be put out of business, so we must find a way of rationalising this process," he said.

Closer to home, Mr Hurlston spoke of the Centre's role in mature consideration of the plan to launch a new employee shareholding vehicle (ESV), promoted as a Safe Harbour Trust. The Office of Tax Simplification had put forward the creation of an ESV which, it hoped, would act as a simpler version of the current employees' trust - with a view to encouraging wider Eso in smaller private companies. The government however had shelved the ESV for fear of tax abuse. The chairman said; "We shared the view of many members, including experienced and regulated trustees, that any new vehicle in the trustee sector would risk creating a new opportunity for mischief as well as any answer to a problem. Our success depends on generous tax breaks being used for the purpose intended.

"The case for ESV was strong, but not strong enough to override a history which includes the QUEST (billions lost to the taxpayer) and Roadchef (*see below*), which illustrated the hazard of the unregulated trust. It is timely too for the UK to recognise the advances made in the regulated jurisdictions especially the Channel Islands."

Companies should take more pride in their Eso plans and allow all shareholders to judge whether or not their company is taking employee share ownership seriously. "For too long, company reports have downplayed Eso

From the Chairman

The next government might well produce another ConDem coalition: that's my working assumption. Cons will strengthen as the day nears; LibDems' local power will ensure they lose fewer seats than votes. Expect de facto Tory support for broad-based employee share schemes; vocal Libdem backing for the John Lewis "model". Big difference: minus Francis Maude the Cabinet Office will refocus. Now you can wait for the June column. Who's crying now....

Malcolm Hurlston CBE

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plans by burying the details in the financial appendices or footnotes, but the Centre wants to see the information incorporated into the main body of their annual reports," said Mr Hurlston.

Alan Judes of **Strategic Remuneration** told delegates that the pronouncements of regulators and the presence of more active shareholders was changing the executive reward picture in "most significant" ways. The EU was right to rule that additional 'allowances' handed out by UK banks to senior staff broke the spirit of the bonus cap. The UK government had intended to take the EU to court to protect the allowances payments, but had recently withdrawn, he said. The Bank of England's Prudential Regulatory Authority had changed the minimum claw-back period rule from six years from vesting to seven years from award grant. Regulators had empowered shareholders by installing a binding vote on remuneration policy which if not approved at the agm would force the company back onto the old executive remuneration policy, said Alan. Some big companies were adding addenda to their directors' remuneration policy docs changing them in response to shareholders' criticisms, he added. The question was bound to arise*: If you are going to have so much trouble fixing variable pay within public companies, why not simply give the executives more cash instead?*, but for most FTSE companies, Long-Term Incentive Plans (LTIPs) still provided the bulk of executive reward. For outstanding performance, LTIPs could provide up to 250 percent of base salary. Shareholders were watching as never before. **Imperial Tobacco** had received 70 emails from shareholders warning that no *golden hellos* would be stomached in the hunt for executive talent and, as a result, the company waved the white flag and changed its remuneration policy docs in an addendum. Future recruitment arrangements would take the form of performance-related variable remuneration, it said. Imps was one of 17 quoted companies forced to change remuneration reports last year. Shareholders had almost over-turned **easyJet**'s remuneration policy – with more than 45 percent voting against it last year. Worse still, the **Kentz Corporation** had lost both its remuneration report and policy docs after its remuneration committee retained discretion to award emergency payments outside the policy and the ceo had received both a one-off bonus, plus a 38 percent basic salary increase. Kentz was then taken over by **SNC Lavilin**. What had started off as '*Let's bash bankers'* had had a blow-back effect, which was affecting the entire UK remuneration industry.
Fred Whittlesey of **Compensation Venture Group** (US) said that it was still not yet clear whether performance-based pay was now the norm in the US. Debate over the measurement of reward had intensified, as consultants focussed on direct compensation and often ignored corporate pensions and jets etc. The maturing of long-term performance option plans at this point in the economic cycle had landed some US executives with the pleasant problem of trying to keep their huge gains low profile. There was pressure on executives not to exercise their matured options immediately because the media picked up on when they sold some of their shares to pay tax bills, wrongly assuming that there was something wrong with the company, said Fred. On the West Coast, many executives did not have retirement plans, but instead they tended to accumulate many millions of dollars in company stock over the years, he said. Pay differentials had become highly politicised, but shareholders did not want to calculate the ratios of senior executive v employee pay. "Worker pay is base pay – there are no benefits or pensions," added Fred. The *Say on Pay* campaign had had some cosmetic effects on the US compensation scene – some perks had been stopped, executive pension company contributions scaled back or stopped and performance conditions bolted onto stock awards. Although there were above performance target pay outs on stock awards, retention grants were paid when there were no pay-outs, he said. *Say on Pay* had helped slow down the level of increases in ceo base pay and all quoted companies had claw-back rules for unjustly gained bonuses. Yet there were still no rules for disclosing the ceo versus average employee pay ratio, nor for ceo pay-for-performance. The remuneration industry was struggling with different performance indicators, such as earnings per share, total shareholder return and return on assets. It was only "just starting" to make thorough analysis of peer group performance, added Mr Whittlesey.
First-time Davos speaker **Keith Butcher** of US boutique finance house **Butcher Joseph** said that Esops were popular among privately-held US companies because their owners could use them to avoid paying Capital Gains Tax (CGT). "There is a positive vibe in Congress about Esops – it's a really vibrant market," he said. There was mythology about Esop numbers in the US to get over – the real number of majority-owned Esop companies of any size was 3,500. One driver was "owners' guilt" – they having witnessed mass lay-offs in their industrial businesses during the long recession, said Keith: "We have social capital at work here – owners will give up value in order to install an Esop – it's really quite shocking," he joked. Most US Esop transactions were leveraged, but financing was readily available as the concept was well understood by private equity and others. Furthermore, employees often had the opportunity to rollover part of their 401(k) funds to help fund the Esop purchase. "We see bigger and bigger Esop transactions – the smallest we did last year was $150m – and longer and longer loans – up to 50 years repayment terms – to employees who buy 100 percent of their company. There is a very liquid market in the US for this, as many companies don't want to go public, so we are trying to mimic Esop values elsewhere in the world," said Mr Butcher.
In some Esop transactions, employee-owners owed more than $1m – I've seen nothing like it," he added. The US tax advantages were enormous: S Corporation Esops (effectively retirement saving schemes) paid no Corporation Tax and as a result, racked up huge turnovers by reinvesting all their earnings– one in Portland, Oregon, making $4bn a year – not having paid any tax in more than a decade.
Jeremy Mindell of **Primondell** discussed the **Base Erosion and Profit Shifting (BEPS)** project, which had been launched by the **Organisation for Economic Co -operation & Development (OECD).** The BEPS

project could entail the largest change to the tax scene since WWII, said Jeremy. Although the US Congress might try to take its own line, there was a political imperative to act, as people in most western countries were complaining that the huge amounts of potential tax payments by multinationals were being kept offshore. The G8 nations had commissioned the OECD to tighten the tax net by exposing how multinationals moved their revenue bases around so as to avoid tax. MP Margaret Hodge had demanded in Parliament: “How is it that Starbucks has recorded 15 years of alleged losses on its UK operations?” Some governments, including the UK Coalition, were looking at taking unilateral action to get back some of the missing corporate tax revenues, said Mr Mindell. So what potential solutions were the G8 looking at? - They wanted to; align corporate income taxation at international level, improve the transparency of tax reporting, ensure transfer pricing outcomes were in line with value creation and co-ordinated country by country reporting in a similar basis, with information exchange, so that mobile executive earnings could be easily verified. “Share schemes will not be exempt from BEPs – the coming regime will have implications for bonuses and other equity rewards earned by internationally mobile employees; questions of their domicile and where they worked and for how long,” warned Jeremy.

Cousins **Brian** and **Mark Purcell** of **Global Shares** gave a presentation about automating and managing the employee share plans of private companies in the US, whose top 100 private companies were worth a combined $ 1.27 trillion. Cargill alone was worth $140bn, but when it launched a share buy-back programme, it was questioned by employees, as there was a lot of scrutiny over transactions, they said. The need for employee liquidity had created a second market for private companies, most of whom did not want to go public. The American Jobs Act had helped to increase the number of investors in such companies and made it easier for private companies to raise money, they said. Special software enabled employees to sell their shares easily, allowed the company to redeem the shares and facilitated quarterly independent valuations. Global Shares had consolidated all the equity components on one system with shareholder interface. Trustees loved it because the software could deal with fractional shares, non-voting shares, spouses’ rights, putting a hold on share sales during forbidden periods, proxy voting for agms and so on. Video inter-action enabled the company to explain to employees what a stock option was. “It’s just as easy to stay private, yet still have the entire tool kit to incentivise and reward employees,” said Mark.

David Pett, partner at **Pett, Franklin & Co.,** gave a talk about recent UK tax and legal changes affecting broad-based and executive equity plans. Special tax efficient bonus payment schemes used by Deutsche Bank and UBS to cover employees had been challenged in the courts by HMRC, as more than £100m per bank was at stake, said David. The Court of Appeal ruled that although the schemes were artificial, they complied with the legislation and a defeated HMRC had applied to the Supreme Court to have the Court of Appeal ruling overturned. Another key case involved Glasgow Rangers soccer club, which used an EBT to transfer cash to sub-trusts, which in turn made loans to certain employees. Again, HMRC failed to convince the court (First Tier Tribunal) that the payments should have been subject to the relevant tax regimes. Although the scheme had been “orchestrated,” the payments were not earnings, but loans. “HMRC had been hoping for a clear decision to allow it to attack a plethora of other arrangements made by various companies, whereby cash had been paid into trusts, which made loans on which no tax or NICs was payable ,” said Mr Pett. HMRC had obtained leave to appeal to the Court of Session and had used the Disguised Remuneration legislation to block such schemes being used in future. HMRC had met another rebuff over the case of Julian Martin, an executive who had repaid his employer a large slice of his bonus when he had left the company after only 18 months of a five-year contract. He then claimed he was entitled to tax relief on his ‘negative taxable earnings,’ which was disputed unsuccessfully by HMRC. The Upper Tier Tribunal ruled that an employee whose bonus was clawed-back may claim relief for the amount by which claw-back exceeds the employee’s earnings for the year. “There is a lot of head-scratching at HMRC about what to do re the tax status of bonus claw-backs and I suspect that legislation on this issue will come after the General Election,” added David.

Another point of interest, said Mr Pett, was the “remarkably generous tax rules” surrounding owners who sold a controlling interest in their company to the new Employee Ownership Trust (EOT). Vendors were completely exempt from CGT on disposals on or after April 6 last year, even if they kept 49 percent of the company and the dividends. In addition, EOTs could award employees tax-free bonuses of up to £3,600 per year, provided all eligible employees were paid on a ‘same terms’ basis.

The scheduled presentation by **Shervin Binesh** of **Western Union** and **Euan Fergusson** of **White & Case** on the challenges of delivering global remuneration had to be postponed until the Centre’s Rome conference on June 4 & 5, owing to Euan’s severe accident while skiing in Davos. Happily, Euan has fully recovered after having an operation to repair his broken collar-bone.

Katherine Neal of **Ogier Legal** and **Donna Laverty** of new company **Elian,** the product of an MBO of the fiduciary business from Ogier, examined the question of whether EBT structures were being undermined by all the recent regulatory changes and adverse media reaction. Donna said that the global reporting environment had imposed a lot of pressure on trustees, especially the US **FATCA** (Foreign Account Tax Compliance Act) legislation. There were new documentation, withholding or reporting requirements on financial institutions. To come in 2017 were the OECD rules on automatic exchange of financial information, she said. “A lot of the reporting is to a level we’ve never seen before.” Donna warned that financial reporting would get a lot more sophisticated in future. Clients might be asked to provide details of their income streams. Trustees risked being caught on a hook - reporting requirements would become more and more detailed, yet trustees had a duty of client confidentiality.

Katherine discussed the enforceability of claw-back; a re

-statement of the accounts could trigger claw-back demands, but would then the company or the trustee appear in the sights of the lawyers? There was little case law so far about claw-back, said Katherine. While companies had to sharpen up their bonus conditions, including repayment arrangements if things went wrong, there could be recruitment problems if they made them too harsh.
Offshore trusts were still a good bet, said Donna, despite adverse media reports. There was creditor protection of trust assets, an advantageous tax regime for trust assets, a regulated trustee environment and political and economic stability. For example, Jersey was looking at the possible appointment of a trustee ombudsman, added Donna.
Paul Anderson of **Bedell Group**, who chaired the trustee panel, said that compliance advice was now costing client companies hundreds of thousands of pounds. Trustees were finding that the management of share dividends was becoming a significant feature of their work. **Peter Mossop** of **Sanne Group** thought that the administrative burden of FATCA had been exaggerated. "There are not so many reporting duties – the IGA (inter-government agreement) has been re-drafted," he said. Earlier, Mr Pett said that he regretted the fact that the proposed *Safe Harbour Trust* had been dropped by the government. "I think the trustees may have shot themselves in the foot by opposing the proposal," he claimed. However, trustees present agreed that the risk of nefarious use of such a new trust structure, were it ever to be enacted, was very real and that if one were to hedge it with anti-avoidance restrictions, the less likely it was to be used.
Justin Cooper, ceo of shareholder solutions at **Capita,** asked whether it was possible to get an exemption for broad-based employee equity plans from the OECD's Common Reporting Standard (CRS) proposals. The conference chairman, Mr Hurlston CBE, thanked **Capita, Solium** and **Linklaters** for helping the Centre to engage with the OECD over the final shape of CRS, in order to ensure that international share plans were treated fairly and not over-burdened with unnecessary new bureaucratic burdens. Justin said that a vast amount of cash went walkies and was not taxed. It was a serious problem worldwide, so co-operation between the tax authorities was critical in this tax recovery battle and a key element of that was the exchange of information. "CRS was spawned from FATCA legislation which, though I said seemed stupid three years ago, is now universal," said Mr Cooper. "FATCA created the concept of the FFI – Foreign Financial Institutions – the first reporting duties of which had started in January. There are now between half a million and one million FFIs in existence, which has created a massive burden of compliance and regulation. The CRS, which goes live from January next year, is essentially more of the same of FATCA." Lobbying could be the key defence to moderate the powerful political drive to implement CRS, but we could expect "over enthusiastic dabbling" by tax authorities to further regulate FFI's obligations to identify and report account holders as exchange data is analysed and regulatory loopholes uncovered, said Justin. HMRC had exempted approved share schemes from US and UK FATCAs and lobbying had succeeded in exempting UK issuers' share registers from the new regime, he added. However, even lobbying campaigns would find it hard to turn back the regulatory tide.
"The pendulum has swung too much towards regulation, which has moved from being principles based to rules based procedures which increase costs," said Mr Cooper. Lobbying might level the playing field because there were anomalies – while share option plans were basically outside the reach of FATCA, some discretionary share plans were caught by it. Again tax approved UK share plans most likely would be exempt from CRS, but unapproved and cross-border plans would most likely be not exempt. The general approach seemed to be no exemption unless your employee equity plan was locally controlled, he added.
Mr Hurlston said that members were well placed to influence policy since the Centre was a member of the OECD's advisory group. Delegates from five jurisdictions offered to support the work.

Alasdair Friend of **Baker & McKenzie** asked why global employee equity plans succeeded in some jurisdictions but not in others. Baker & McKenzie had seen a lot of global employee stock purchase plans coming out of the US recently and clients tended to want one size fits all plans, rather than plans tailored to individual jurisdictions. Share plans were unpopular in some countries, eg Russia, where people loved cash and sometimes tarred share plans as part of a 'capitalist conspiracy,' said Alasdair. However, companies were extending share plans into China, as regulatory approval process was becoming easier to navigate. Successful Eso plans were characterised by: clarity in objectives, clear communications strategy and knowing who the target participants were. Obstacles included tax withholding and reporting compliance and heightened data privacy controls. There were 'quick wins' to be had by using a simple plan structure on a global basis, with limited specific country exceptions. It was best to use standardised documentation, grant and vesting dates, online access and withhold taxes from shares, rather than through the payroll, said Mr Friend. Simplicity was key. Plan administration had to be centralised, but before that, local champions often played a vital role in building up plan participation rates. Tax advantaged plans were not always the best from the sponsor company's point of view – they had to consider benefits against costs. Many countries offered tax perks when plans complied with certain conditions, but policing them, to ensure that all the conditions were being met, was expensive and burdensome. Could the company keep up the compliance checks or risk an investigation if it did not? Alasdair showed through case histories how much simpler it was to launch employee share/stock plans in the US than in France. In the former, plan sponsor companies did not have to negotiate with employee representatives in advance of launching an all-employee share/stock plan, whereas in France they did. A positive inertia applied to the introduction of employee share plans in the US where they had existed for many decades and where, accordingly, they were not feared or resisted.
Kevin Lim and **Mike Pewton** of **Solium** asked

whether fiscal incentives were essential for the development of broad-based employee share plans. Mike said how curious it was that hardly anyone, including companies, in Spain had been aware that employees could have up to €12,000 in income from shares in an all-employee plan without having to pay income tax. “Fiscal incentives for these plans are essential. The existence of this substantial tax incentive only really came to light when the government threatened to abolish it – and then people protested,” said Mr Pewton. “This tax incentive is almost equivalent to an annual salary in some parts of Spain, but it needs to be properly marketed because the culture of employee share ownership is not yet fully developed there.”
There were, however, many other reasons why global employee equity plans were successful or not: advisers sometimes did not stress the importance of plan tax planning sufficiently, e.g. the holding period. Companies might look at the tax implications for certain mobile employees, but not at the reporting aspects, which were increasingly important, he said. Then there was financial education, as many employees, even in Eso friendly companies, did not understand the differences between share and share option awards. “In Spain, very few companies have introduced broad-based Eso plans and many do not know whether they will or would have to pay tax and social contributions on them. It is criminal behaviour that Spanish employees are not being told about the €12,000 income tax exemption from share settled compensation – they must be given this information,” said Mr Pewton.
Mr Lim said that many companies had been moving from international sharesave plans to employee share purchase plans. “In South-East Asia, lots of employees move around a lot, so three years is too long to wait to receive share plan gains. Shorter plan vesting periods have helped plan participation rates to increase,” he said.
Mr Hurlston said that not many people were giving employees financial advice in general because it was illegal for companies to make specific recommendations – for example on whether to participate or not in the company employee share plans. He thanked **Computershare**, represented in Davos by **Martyn Drake**, for having printed the conference delegate handbook. During the conference many speakers expressed gratitude for the quality of the presentation and unusually few copies were left behind.
Earlier, during the open delegate debate, speaker **Fred Whittlesey** gave a veiled warning about the structure of US share markets: “These days, between 60 and 70 percent of share trading in the US is high frequency trading in which traders often don’t even want to hold the shares they purchase for one single night,” he said.
Increased regulation over remuneration had led to big increases in fixed executive pay, especially in the banking and financial services sector said **Mr Judes**. In the US, pension entitlement was linked to accrual rates in 401(k) plans, but pensions were “a dying cause.”

Final pay out in sight for Roadchef shareholders
Almost 600 present and former staff of the motorway services chain **Roadchef** will qualify for major payouts after winning their 17 year legal battle for shares which had been set aside in an employee benefit trust by the company’s late founder Patrick Gee to reward their hard work
Mr Gee, who bought Roadchef in a management buy-out in 1983, had instructed - before his death - that 20 percent of shares in his business be assigned to an employee trust. However, 600 staff didn’t receive a penny when the business was subsequently sold in 1998 to a Japanese company by Tim Ingram Hill – who had succeeded Mr Gee at the head of Roadchef. The deal made Ingram-Hill, a former pheasant plucker in the kitchens of the Savoy Hotel, more than £25m.
The legal battle of behalf the Roadchef staff, many of whom no longer work for the business, was championed for 17 years by the Cardiff law firm Capital Law and its senior partner Chris Nott. It came to a successful conclusion in favour of the employees following a recent High Court ruling against Mr Ingham Hill.
Roadchef Employee Benefits Trustee Ltd (REBTL) was set up in 1986 for the benefit of the company’s employees by the trade union bank, **Unity Trust.** The dispute largely concerned Mr Ingram Hill’s acquisition of 22m Roadchef shares from a second trust which he cashed in when Roadchef was sold in 1998. Had the scheme been allowed to operate according to the wishes of Mr Gee, many qualifying Roadchef employees would have received five figure sums when the business was subsequently sold.
Although the terms of the final settlement remain confidential, it is thought that the largest pay-outs to Roadchef employees could be £20,000 or more per head.
Bankrolled by Harbour Litigation Funding, the claim involved the 1998 transfer of shares in Roadchef between two trusts, EBT1 and EBT2. EBT1 operated an employee share ownership plan for the benefit of employees while EBT2 was used to provide share incentives to senior management.
The dispute brought to court concerned the circumstances in which the EBT trustees granted options over the shares to Ingram Hill personally, who served in top positions in Roadchef over many years, including md, chairman and cfo.
The claimant argued that transfer of shares from EBT1 to EBT2 was void and that the transfer made was in breach of trust or breach of fiduciary duty owed to the beneficiaries of EBT1. There were further allegations that Ingram Hill dishonestly assisted in the breach, as he received the shares in the knowledge that they had been transferred allegedly in breach of fiduciary duty, though he has not been convicted of any criminal offence.
As previously reported in Newspad, having considered whether or not the transfer of the shares was entirely valid, void or voidable, in ***January 2014*** *Justice Proudman found that, irrespective of any wrongdoing on the part of Ingram Hill, the transfer was void as it was outside the power of the trustees. Judge Proudman held that the claimant could therefore void the transfer of the shares.*
The High Court found Ingram Hill liable for breach of fiduciary duty as he did not obtain the informed consent of other directors, because he did not tell them he intended to secure the options over the shares. The High Court then ruled that Mr Ingram Hill, who had become

one of Britain's wealthiest men, had to account for the profits made from his receipt of the 22m shares intended for employees.

In the years immediately following the sale of Roadchef, Mr Ingram Hill remained a director of REBTL and the manner in which shares had been transferred out of the trust meant that the trust had no funds to pursue him. He ceased to be a director of REBTL in 2005 with the appointment of the current board – their primary objective being to try and recover money from Mr Ingram Hill, restore funds to the trust and to distribute it to Roadchef's current and former employees.

A turning point came in 2010 when Capital Law managed to unlock the case by taking advantage of a change in law around the funding of litigation, securing funding from leading third party funder, Harbour. The case was one of the first in the UK to be supported in this way.

Andrew Brown, Partner at Capital Law, said: "The terms of the settlement remain confidential, but years of complex and hard-fought litigation have been brought to an end by considerable co-operation between the trustees, the Ingram Hills, and their respective legal teams. We have never lost sight of those who should have benefitted from the employee share ownership plan and we embraced the challenge of raising funding to pursue a claim at a time when the litigation funding market was in its infancy. The trustees will now need to undertake negotiations with HMRC and other parties to determine precisely how much money will be available for distribution. They will continue to work to administer the trust as swiftly as possible so that the beneficiaries can receive their respective payments without further undue delay."

Mr Nott said: "What came to us in the first instance was a handful of pieces of documentation from then Roadchef company secretary Tim Warwick. "We shared the view that something wasn't right and began to put the jigsaw together from these early pieces. Tim deserves credit for his actions, particularly coming as they did at a time before whistleblowers were protected. At that time, the case had no funding and the easiest thing for everyone to do would have been to let it wither and die on the vine. We've been told numerous times over the past 20 years that the case was 'undoable' but we believed in it. It'll be pleasing to the thousands of ordinary people who stand to benefit that our persistence has paid off."

The present owners of Roadchef had no involvement in the transaction and have assisted REBTL and its lawyers for the benefit of the trust's beneficiaries. In a statement Mr Ingram Hill said: "I wish the employees of Roadchef the very best and I am obviously delighted there has been an amicable settlement."

Centre chairman Malcolm Hurlston, CBE, said: "This is not quite the end of the story but it is certainly a heartwarming development. Roadchef was the poster boy for esops in the early days and the fall from grace could have been damaging. Many people had their eyes off the ball who should have known better.

"Too much respect is often shown to powerful ceos with a presumption they have all the right interests in mind. Former cfos are a particular challenge.

It has been a long wait for employees and they will get nothing like what that fine man Patrick Gee would have wished. But this agreement should produce relatively substantial sums which would be a good outcome in all the circumstances."

Eso rights of zero hours employees at Sports Direct

Former employee share ownership award winner **Sports Direct** faces a multi-million compensation claim from part-time staff who were excluded from the firm's share bonus scheme because they were on 'zero hours' contracts. The Sports Direct share scheme paid out almost £160m worth of shares to 2,000 full-time 'permanent' employees in 2013 after the company achieved record sales. Full-time employees have made small fortunes from participating in the company's performance-based share bonus schemes in recent years.

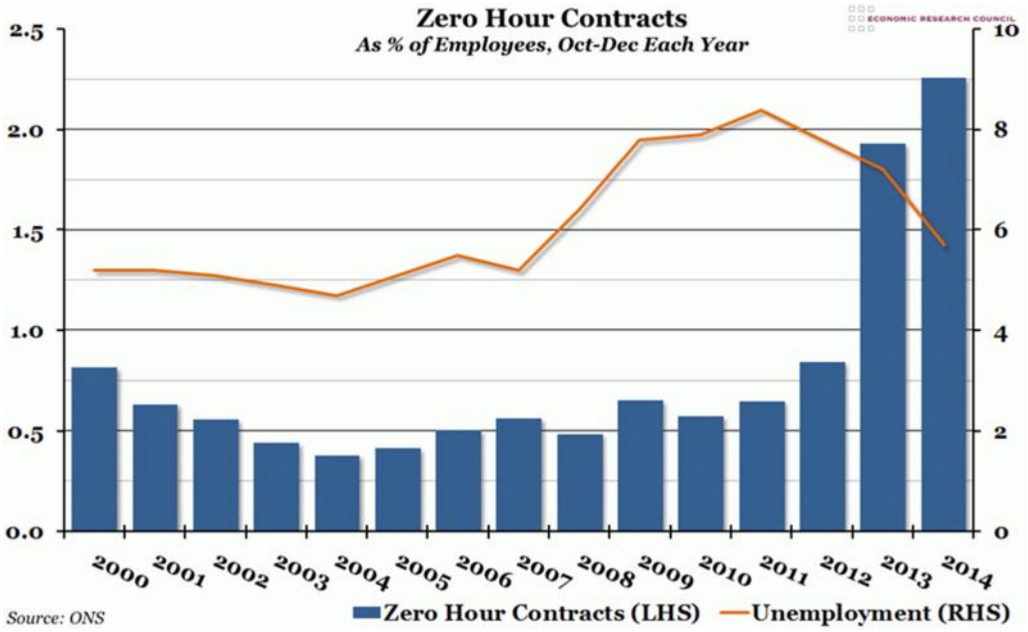
Lawyers representing part-time staff have sent letters to Sports Direct claiming more than £1m in compensation for the first batch of 30 excluded employees, who each had a minimum *five years* continuous employment with the firm, including the period covered by the share bonus scheme. Their claims are on average about £36,000 each, but the highest is a claim for more than £100,000. The other 268 zero hours employees will have their compensation claims filed in batches over the next six months. Last year Sports Direct admitted that their zero hours staff were entitled to holiday and sick pay after legal action launched by a former employee. Retailers who offer different benefits to workers on zero hours contracts than are offered to permanent employees should beware of rules equalising the treatment of part-time and comparative full-time workers, warned Centre member **Pinsent Masons**. The term zero hours is not defined in UK employment law, but generally refers to a flexible employment arrangement without guaranteed hours. Employment law expert Paul Gillen said that although most of these contracts gave staff 'worker' status for employment law purposes, an 'employee' relationship with equivalent rights could develop over time in some circumstances. "Employers are aware of the furore over the use of zero hours contracts, but this is a wake-up call to retailers to again review the operation of such contracts and the nature of employment status which may or may not subsist throughout these contracts during periods where no work is provided," he said. "They should be aware of the application of protection offered to part-time workers whereby they must not be treated less favourably than comparative full-time workers, albeit the pro-rata principle can apply."

Office for National Statistics annual survey

The number of UK employees on zero hours contracts had climbed to almost 700,000 - more than two percent of all UK employees - by the end of last year, revealed an Office for National Statistics annual survey.

The survey, published on February 25 suggested that the number of such contracts had grown to 697,000 in 2014, or 2.26% of all employees. It is clear that their prevalence has grown as unemployment has fallen.

The graph (page 7) shows the percentage of all employees on zero hours contracts in the final quarter of each year (bars against left hand axis) compared to the total unemployment rate (the percentage of people who are unable to find a job out of the total labour force)



(line measured against the right hand axis) over the same period.

Zero hours contracts have been making headlines over the last year or two. Before 2013, they represented a small but fairly steady section of the labour force. Between 2012 and 2014, they have almost tripled in number as a proportion of all jobs. This is in contrast to the unemployment rate, which has fallen significantly over that period, and that suggests that a lot of the jobs that have been created recently have come with much less security and guaranteed pay.

Of course, there are some sectors where zero hours contracts make sense, and plenty of people may choose to enter into the contracts due to their personal circumstances. However, 33% of people on zero hours would like to work more hours (either in their current job or in a different one), compared to just 13% of people not on a zero hours contract. There is also some evidence that companies offering the contracts will struggle to retain their employees as the labour market continues to improve: 16% of people on zero hours are looking for new jobs, compared to 6% of all employees.

Employees to be offered flotation shares

Around 2,500 employees are expected to be offered the chance to buy shares in their employer when Sofa giant **DFS Furniture** lists on the London Stock Exchange. DFS has 101 stores in the UK, three in the Republic of Ireland and recently opened a shop in Holland where it is planning to replicate the business. DFS Furniture has set the price range for its planned flotation at 245p to 310p per share, which at the midpoint would value the company at around £585m. The retailer, which claims to be the biggest sofa retailer in the UK and account for more than a quarter of the market, said it hoped to raise £98m from the offering, which will be used to pay down debt and unlock cheaper financing. Its initial public offering (IPO) will comprise both new shares and those held by management and private equity owners **Advent International**. The board of directors and senior management can sell up to 30 percent of their holdings in the offer but the remainder will be subject to a 365-day lock-up, while Advent may not fully exit DFS for 180 days.

RTI penalties eased

HMRC announced that employers will not incur automatic penalties for the late filing of PAYE **Real Time Information (RTI)** submissions if the filing is late by three days or fewer, said Centre member **Deloitte.** The automatic late filing penalties regime began last October for employers with 50 or more employees and is due to be extended to all employers from March 6 this year. Employers who have received penalties and who would have benefited from the three-day concession are advised by HMRC to appeal their penalties online. The announcement is linked to an open HMRC consultation on penalties in general launched in February and HMRC will review PAYE penalties by April 2016. However there are as yet no announced changes to the filing deadlines for RTI submissions, nor are there changes for late payment penalties, which will continue to be reviewed on a risk-assessment basis rather than be issued automatically. See http://deloi.tt/1CF6hkO

Equatex goes live

Renamed service provider **Equatex** provides international employee and executive compensation plan services for global enterprise, supporting clients with participants in Europe, Asia, Australia and the US. With world-class cloud technologies, Equatex will enable companies to deliver engaging compensation schemes across borders, languages and currencies. Equatex supports around 100 international businesses with one million employees, providing customised end-to-end solutions from funding instruments to administration and execution. The business was formerly the CEFS International operation of Swiss bank UBS, represented by **Karin Meier** at the Centre's recent **Davos** conference.

Architects lead the way to EO status

Architectural visualisation studio **Hayes Davidson** has become the latest architectural practice to change its status to employee-owned. The move sees all the employees at the practice, which was founded in 1989, taking a stake in the outfit and the creation of an employee ownership trust holding the shares for the benefit of all the partners. The company works with some of the UK's largest architecture and design practices including Centre member **Foster + Partners, RSHP, Allies and Morrison, AHMM** and **Zaha Hadid.** Other architectural practices who have taken the same or a similar route include **Arup, Make Architects** and **Stride Treglown**. Hayes Davidson founder Alan Davidson said: 'This change reinforces the truly collaborative nature of a professional architectural visualisation studio. Employee ownership reflects many of the important values already held at Hayes Davidson; of partnership, transparency and mutual support." A team from Centre member **Fieldfisher,** led by partner Graeme Nuttall, OBE, advised Hayes Davidson on its transition from a limited liability partnership to a 100 percent employee trust owned company. **Business Minister Jo Swinson** said: "Greater employee engagement leads to better business and a stronger economy. That is why Government has raised awareness of employee ownership with our industry partners and made changes to company law to help those hoping to move in this direction. Hayes Davidson is the most recent UK company to take this step, providing their employees with a stake in their own company and I wish them every success."

Blackwells, the chain of academic bookshops, hopes to become a staff-owned business. All Blackwell's 550 permanent employees, from ceo to junior bookseller will be handed a share of the business. "Everyone will own it. It will be a very democratic organisation," said ceo David Prescott. "We will all have one share. It will be an equal stake whether you are the guy in unloading deliveries, or a bookseller or the ceo. We have seen from John Lewis that when you own it, you care for it more and that brings commercial success as well." Some of the 200 staff in Blackwell's campus shops, which open only during term time, may be eligible to become employee owners too. The owner, Toby Blackwell, whose great-grandfather founded the bookshop in 1879, has long wanted to hand it over to staff, hoping to secure its future and keep the family name above the door. Recession and enormous changes in the book world intervened. Although Blackwell's has not set a date to institute the change of ownership, legal documents are being drafted and a constitution of values has been drawn up.

Share plan taxes post April 6

The taxation of share options and awards held by internationally mobile employees has historically been a complex area, said Centre member **Abbiss Cadres**. Hitherto, liability to UK tax was determined by reference to an employee's residence status as at the date of grant of a share option. So, if an employee moved to the UK after an option was granted, he/she would not be subject to UK tax on the exercise of the option. However, this position was subject to exceptions and provisos. For example, certain types of rights to acquire shares (such as restricted stock units) may be taxed differently depending on their legal structure. Although HMRC produced guidance on this subject over the years, there still remains uncertainty as to how the rules should be applied in practice. As part of the UK government's tax simplification project, a new tax regime will come into force on **April 6** this year. *Under the new rules, the taxation of share options and awards held by internationally mobile employees will be more closely aligned with other forms of employment income.* Residence status at the date of grant will no longer be relevant. Instead, an employee's tax liability will be determined broadly in line with his/her residence status over the vesting period. The current remittance basis rules for non-domiciled employees who are resident in the UK will continue to apply. The new rules will apply to all share options exercised/share awards vesting after April 6 2015 whenever they were granted. There may be employees who would not have expected to be subject to UK tax under the old rules (because they were non UK resident at the date of grant) who would be subject to UK tax if they exercised their options after April 6.

STEP, the Society of Trust & Estate Practitioners, announced that **HMRC** was imposing new fee scales from April 1 for registering trust and company service providers (TCSP) under the 2007 Money Laundering Regulations. The main change is a doubling of the fee to £100 per person for the 'fit and proper person' test applied to owners and directors of TCSPs. The test, which is intended to ensure that 'unsuitable' people are not allowed to run such businesses, is carried out by HMRC when it considers the application for registration of the business, or when a new person joins. Some trustees may have to apply for a test. HMRC will refuse registration if any of the relevant persons fails the test; the fee is non-refundable. Those affected are: sole proprietors or partners in a business; shareholders who own or control more than 25 percent of the company; and the directors or nominated officers. The annual fee for each of the company's registered premises goes up to £110. The increased fees apply to money service businesses. **-** See more at: http://tinyurl.com/nhcn56x

Electioneering: profit-sharing pledge

The **Co-operative Party** – which puts up joint candidates with Labour in some parliamentary seats – tabled proposals for the Labour manifesto, urging the party to ensure that all businesses with more than 50 employees would be obliged to set up a profit-sharing scheme with their staff, with a minimum profit share pot set aside, based on a calculation of its annual profits. Its manifesto proposed legislative changes, such as creating a statutory duty to foster diversity of corporate forms and report to Parliament annually on progress. This would include the promotion of mutuals, employee-owned firms, family-owned enterprises and other corporate forms. The policy paper made the case for establishing a *'John Lewis economy'* where employees can share ownership, decision-making and profits of UK businesses. However, the party stressed that tax relief should only be offered to all-employee share ownership schemes. The plan is similar to legislation in **France** where companies can choose to distribute rewards either as a flat rate payment to employees, in proportion to wages, or in proportion to the hours worked in the previous year. It called for a new 'duty to involve' to give employees formal roles in company decisions on bodies, such as works councils. **Populus** polling commissioned by the Co-op Party suggests that 76 percent of the UK public are in favour of employees having a bigger say in how a company is run, as well as the widespread introduction of profit-sharing schemes. It claims that the prevalence of profit-sharing schemes, along with other mandatory John Lewis-style approaches in France, contributes to higher levels of productivity there than in the UK. In 2012 (the most recent year for comparison), France had the second highest level of productivity per hour worked in the G7 Nations, more than 30 percent higher than the UK, which is languishing in sixth place. The Office for National Statistics suggests that there are 36,000 companies with 50 or more employees in the UK, employing almost 13m people. Labour leader Ed Miliband endorsed the proposals.

On the move

Bill Cohen, partner global share schemes, has celebrated his 20th anniversary since arriving at Centre member **Deloitte UK.**

Daniel Godfrey, ceo of **The Investment Association (IA),** was the Centre's latest high table GoH and speaker at the **RAF Club** in Piccadilly. Chairman Malcolm Hurlston CBE, told Mr Godfrey: "There is a vast overlap of interest between us. From the Centre's point of view we advocate the employee ownership of the millions ideally with shares directly owned and used. This can help reduce inequality and support long term provision. We would like flexible dilution limits differentiating on favour of all-employee plans which have social merit. I hope it may be within the remit of the IA to support the Centre's efforts to encourage employee owners to vote and for all employee share schemes to be better reported."

Registry Trust, the not-for-profit company which controls credit judgment information in the UK, acquired **Streetwise Analytics** for an undisclosed sum. The two companies have worked together for five years bringing analytical expertise to the Trust's significant data, which influences most lending decisions in the UK. Dr Tim Drye of Streetwise becomes adviser to the Trust; his partner Richard Malivoire will work full time for Registry Trust. The venture will be known as **RT Streetwise**. Streetwise's best known client is **Comic Relief.** Announcing the acquisition, Trust chairman Malcolm Hurlston CBE said the aim was to bring the magic which worked for Comic Relief to the support of the whole charitable sector. Streetwise has helped Registry Trust during 2014 to make its judgment information available free online in anonymised form for use by researchers and policymakers.

Online stock broking firm the **Share Centre** said in a report that the collective profits of FTSE 350 firms before tax rose by 21 percent in the year to last September, to just over £8bn. "However, this is linked to lower asset write-downs, lower exceptional costs, and to [a] lesser extent improvements in the way companies finance themselves, rather than operational success at UK plc," said the Centre member.

QE fuels occupational pensions deficit crisis

Five in every six occupational final salary schemes have fallen into the red and face a struggle to pay savers a full pension, warned the head of the government's pensions lifeboat. Alan Rubenstein, ceo of the **Pensions Protection Fund (PPF**), said the ***11m*** employed people with a supposedly guaranteed, inflation-linked pension were being led to believe their pension was safe, when "for many that isn't the case." Some savers who try to cash in their final salary pots early, by using the new pension freedoms due to start next month (April), face losing up to 40 percent of the value of the pension they've built up, he said.

Mr Rubenstein, whose organisation was set up in the wake of several collapsed company scandals to rescue final salary plans, added: "*It is misleading to allow people to expect promised pensions when in fact there is only money enough to pay about 60 percent of those pensions* [should they be cashed in from April] *and where nothing is being done about the shortfall.*"

Chancellor George Osborne's pension freedoms will arrive as the health of final salary pensions is deteriorating dramatically. Latest statistics released by the PPF show the funding deficit for direct benefit (DB) schemes stood at a record ***£367.5 bn*** at the end of January this year. This was a huge jump from the £266.3bn deficit at the end of December 2014. There were 5,175 schemes in deficit and only 882 schemes in surplus.

Centre chairman Malcolm Hurlston said: "The slow-burning crisis in the occupational pensions sector shows how important it can be for employees at all levels to build up long-term savings by joining and remaining loyal to their company employee share schemes. While employee share ownership can never replace company pensions, it increasingly provides a worthwhile supplement to them."

DB pensions offer employees a fixed inflation-linked monthly income based partly on final salary level and on length of service, whereas money purchase pensions require employers' contributions, though money purchase pension levels ultimately depend on investment returns.

BT's pension fund shortfall has almost doubled to £7bn in the last three years and accordingly, the company will pay in a £1.5bn top-up this year, followed by extra payments in the next two years. BT's corporate pension fund, the UK's largest, has 300,000 members – past and present employees.

The funding ratio (assets as a percentage of liabilities) of schemes overall decreased over the year from 96 percent to a record low of 77.6 percent. It is believed that 500,000 DB scheme members want to transfer to an MP scheme, but there is a risk DB schemes might massage down transfer values and exploit consumer bias for short term money as a way to reduce deficits, warned Hargreaves Lansdown**.** Schemes may want to use internal communications to emphasise the ability to transfer away - in order to balance their books, it said.

Economists say that the rising number of corporate pension fund deficits is an unintended consequence of the Bank of England's low interest rates and quantitative easing (money printing), which have pushed down bond yields. Regulation linking bonds and pensions means that as yields drop, total pension liabilities rise in turn. Companies must find the cash to meet their rising pension liabilities, in the hope that they will then have large enough pots to cover the payouts they are due to make. "During January, liabilities rose by 9.2 percent, reflecting decreases in nominal and index-linked gilt yields," the PPF said. Some companies report that pension fund deficits are having an impact on their investment decisions and on mergers and acquisitions activity.

CONFERENCES

JERSEY March 13

With less than two weeks to go and **50 places already booked**, now is the time to secure your seat at our annual half-day Jersey conference, organised in conjunction with STEP.

This Law Society accredited half-day conference will run from **9am till 1.15pm**, prefaced by refreshments and followed by a **complimentary networking lunch**. The conference will qualify you for **three and a half hours CPD credit**.

Always an interactive event, last year's addition - the trustee panel - took us to new heights. This year's panel will be chaired by Rosemary Marr of STEP and Moore Stephens. She'll be accompanied by Nancy Chien of Bedell Group who has been involved in the FATCA negotiations with Jersey government resulting in the latest set of guidance notes.

Focusing on share schemes from a trustee perspective, this conference will bring you up to date on regulatory change affecting share schemes, UK tax pitfalls facing trustees, key recent trust cases, whether ESTs are still useful and the political context for their present and future.

Presentations will be from: **Malcolm Hurlston CBE**, **the ESOP Centre**: the British Isles perspective; **Graham Muir**, **Nabarro LLP**: employee share schemes - an update; **Jeremy Mindell, Primondell**: UK Tax overview; **Toby Locke**, **Grant Thornton**: EBTs and share plans in a brave new world; **Paul Malin**, **Haines Watts**: some of the UK tax issues facing problem clients with EBTs; **Steve Meiklejohn**, **Ogier Legal**: a round-up of important trust cases from 2014; **Trustee panel**: Jersey present and future in the new age for ESTs

For more information, including a more detailed breakdown of each speaker's topic, please visit the Jersey 2015 event page on the Centre's website www.esopcentre.com.

There are STEP and ESOP Centre member discounts for this competitively priced conference.

Delegate prices

STEP / ESOP Centre members: £325

Non-members: £450

Your Centre Jersey conference contact is Jacob Boult. To book you place as a delegate please email esop@esopcentre.com with delegate names and contact details, or call on 0207 239 4971.

ROME June 4 & 5 2015

Ten speaker presentations are already in place and just four slots remain for the Centre's **27th annual European employee equity plans conference,** which takes place at the four-star **Residenza di Ripetta** hotel in **Rome** on **Thursday June 4** and **Friday June 5.** Speaker confirmations to date have been received from: **Accurate Equity**; the **Communications Workers Union** (*who will discuss employee share schemes in the Royal Mail)*; **European Trade Union Confederation**; **Primondell**; **Solium; Strategic Remuneration; Tapestry Compliance; The Investment Association; Western Union** and international lawyers **White & Case**. Our summer event offers an ideal forum for updating yourself on latest legal, regulatory and market trends in the employee and executive equity schemes industry; doing business; discussing share plan strategies and networking. Centre trustee members **Appleby Global** and **Bedell Group** are logo co-sponsors of the conference e-brochure.

Speakers will benefit from a significant price reduction on the package fee, subject to agreed topic content. Practitioner **speakers**, who are Centre members, will pay only **£995** and plan issuer **speakers** will pay just **£595**. (No sales tax is chargeable on delegate/speaker fees). **If you wish to book a speaking slot at this event, you should do so now.**

The Centre offers **delegates** a conference package comprising:

Entrance to all conference sessions; two nights' accommodation (on single occupancy basis) on June 3 & 4 in the Residenza di Ripetta; breakfasts, lunches and refreshments during coffee breaks; delegate pack with speech summaries and cocktail party early evening on June 4

Delegate fees:

Centre member delegates:

Practitioners: £1,135 Plan issuers: £675

Non-member delegates:

Practitioners: £1,750 Plan issuers: £765

The historic Residenza di Ripetta is a converted 17th century convent featuring ancient frescoes, original arches, a Baroque chapel and an inner courtyard with garden, *perfect for meals and drinks in the sun,* plus a panoramic terrace offering views over central Rome. The hotel is superbly located between Piazza del Popolo, the River Tiber and Piazza Borghese. Spanish Steps, Villa Medici and top shopping quarter Via Condotti are all within walking distance. Flaminio, the nearest Metro station is five minutes away.

(website: *http://niquesahotels.com/residenza-di-ripetta*)

Our special discounted room prices* are available to those who want to upgrade their rooms or extend their stay (subject to availability)

Supplements charged for two person room occupation are only €20 extra per night.

The normal hotel rate for rooms in our conference hotel is €651 per night = GBP 484 per night approx.

However, you will pay a group rate of only c €250 = GBP 185 *(at current exchange rates)* ***per night if you wish to stay extra nights.*** Please contact **Fred Hackworth** at fhackworth@esopcentre.com with a copy to: esop@esopcentre.com

Half UK employees suffer pay freeze

The latest *Labour Market Outlook* highlighted how almost half of the UK workforce suffered either a pay freeze or a pay cut (three percent pay cut, 39 percent pay freeze) in the twelve months to December 2014, reported Centre member **Chartered Institute of Personnel & Development CIPD**. In contrast, a similar proportion (40 percent) have received a pay increase of two percent or more and 18 percent fall in the middle ground of people who have received a pay increase in the 0.1-1.99 percent corridor. Public sector employers - 54 percent - were most likely to report awarding a pay freeze in the 12 months to December 2014 and 45 percent of SMEs were similarly restrained.

Bonus corner

The chief executives of Britain's biggest high street banks will be handed more than £3m in annual bonuses for 2014 but will see their total payouts curbed after another year in which their employers faced heavy regulatory fines, said *Sky News*. **HSBC** ceo Stuart Gulliver saw his overall pay, including pension contributions, for the year fall to £7.6m from £8.03m in 2013. The lower total reflected a smaller bonus of £3.4m for the year, compared to £5.5m in 2013. Mr Gulliver said the lower bonus reflected "failures" linked to foreign exchange manipulation. The group's worldwide profits fell 17 percent during calendar year 2014. Chairman Douglas Flint's total pay increased marginally to £2.5m for the year, but he did not receive a bonus. Pressed after the results on whether he should have received a bonus, Mr Gulliver said his bonuses were subject to 100 percent claw-back by the bank for seven years, enabling the bank to demand repayment, "If anything turns up later that happened on my watch". His bonus was cut largely due to the £216m fine from the City watchdog for control failings in HSBC's foreign exchange operations. Mr Gulliver was paid a basic salary of £1.25m and a 'role-based allowance' worth £1.7m introduced to by-pass the impact of new European pay rules in 2014. He made a public apology over the re-emergence of a tax evasion scandal at HSBC's Swiss private banking arm and wants to clean up the affair, which dates back a decade, according to one insider. Gulliver was dragged into the Swiss tax furore, with HSBC confirming he used a Swiss bank account to hold his bonuses. The bank was responding to a report in the *Guardian* that Mr Gulliver has £5m in the account which he controls using a Panamanian company. HSBC said he opened the account in 1998 when he was living and working in Hong Kong and full tax was paid in Hong Kong on the bonus payments. Mr Gulliver said he had never paid below the highest rate of UK tax on all his earnings since becoming ceo. "I'm UK tax resident, Hong Kong domiciled. I've paid full UK tax on the entirety of my worldwide earnings. It's not surprising as a 35-year HSBC veteran that I should be Hong Kong domiciled. I would expect to die abroad, which is a test of domicile," he added. His annual bonus was expected to be the largest paid to a UK bank chief executive for 2014.

The ceos' annual bonuses account for only part of their overall remuneration packages. Under reforms introduced by the **European Banking Authority (EBA)** last year, material risk-takers in banks now have their variable pay capped at 100 percent of their fixed pay, or twice that sum if shareholders have explicitly approved the move. Investors in Barclays, HSBC and Lloyds have all approved the higher threshold, while RBS fought an unsuccessful private battle with the Treasury which culminated with it only being able to pay out bonuses equivalent to an employee's salary. The Treasury sold a further £500m of Lloyds' shares, taking the taxpayers' stake in the rescued bank down to 24 percent.

The new rules have led to almost all major banks operating in the EU, including the big four UK institutions, introducing role-based allowances to contend with the European cap. These count towards fixed pay but can be adjusted on an annual or in some more cases more frequent basis, leading to a review by the EBA which may announce further restrictions on their payment in the coming weeks. Barclays ceo, Antony Jenkins allowance is £950,000, which gives him aggregate fixed pay of £2.05m, while at Lloyds, Mr Horta-Osorio is paid a £900,000 allowance on top of his £1.061m salary

The ceo of 81 percent state owned **Royal Bank of Scotland (RBS)** is to forgo a share award worth £1m. Ross McEwan did not want the allowance "to be a distraction from the task of building a great bank". The 'role based' incentive is being used by major banks to sidestep EU rules that limit bankers' bonuses. Mr McEwan's pay for 2015 is expected to top £2.7m - even after handing back the £1m share award, because he is eligible for long-term share awards equivalent to the sum of his fixed pay. RBS still handed out £421m in bonuses to staff below board level in 2014, as it reported its seventh consecutive year of losses and appointed Sir Howard Davies as its new chairman as from September.

Labour said that bankers who engage in 'inappropriate behaviour' could face having their bonuses clawed back up to ten years after they were awarded if it won the General Election. The pledge, part of a package of reforms, would extend the current seven-year claw-back period, seen as one of the toughest in the world, because of the length of time it can take for banking scandals to emerge. Shadow Chancellor Ed Balls said that the latest allegations that HSBC's Swiss banking arm had helped thousands of clients to avoid paying UK taxes dating back to 2005 justify the extension. "As we have seen in recent days, wrongdoing can take years to uncover. The current proposals to claw back bonuses are too weak and do not cover a long enough period of time," he said. "We will ensure people involved in misbehaviour and misconduct would have to give back their bonuses for at least a decade after they have been paid out." The

Conservatives dismissed the proposals, saying that the Bank of England was already consulting on extending the claw-back period to ten years.

US financial regulators are focusing renewed attention on **Wall Street** pay and are designing rules to curb compensation packages that could encourage excessive risk taking. Regulators are considering requiring certain employees within Wall Street firms hand back bonuses for egregious blunders or fraud as part of incentive compensation rules the 2010 Dodd-Frank law mandated be written, according to people familiar with the negotiations. Including such a claw-back provision in the rules would go beyond what regulators first proposed in 2011 but never finalised. The claw-back requirement, which is being hashed out among six regulatory agencies, would be part of a broader compensation programme in which firms are required to hang onto a significant portion, perhaps as much as 50 percent, of an executive's bonus for a certain length of time. The Dodd-Frank law included provisions for an incentive-compensation rule to help ensure Wall Street incentive packages are aligned with a company's long-term health rather than short-term profits.

Exactly which firms will be covered is still a matter of debate among the agencies involved in the discussions, but the 2010 law requires regulators to impose incentive-compensation rules on banks, broker dealers, investment advisers, mortgage giants **Fannie Mae** and **Freddie Mac** and any other financial institution deemed necessary. It also remains to be seen what type of behaviour—besides fraud—would trigger a claw-back and whether conduct identified by the firm or regulators would necessitate reclaiming compensation.

Some banks are already voluntarily recouping money from employees who engage in misconduct or excessive risk. **J.P. Morgan Chase & Co**. clawed back about two years' worth of total compensation from three traders involved in the 2012 *London whale* trading debacle, which cost the firm $6bn. Many banks have implemented stricter bonus practices since the 2008 financial crisis, including deferring more pay and linking more compensation to longer-term performance.

Shareholder activists say the existing claw-backs some firms have are too weak and that it remains unclear how often those policies are invoked because banks don't usually disclose when the tool is used. The New York City comptroller has been successful in getting banks such as **Citigroup** and **Wells Fargo** to expand their claw-back policies in recent years. But many big banks have resisted the office's efforts to have them routinely disclose when and how much compensation they claw back, according to the comptroller's office. "While many banks now have strong claw-back policies on paper, absent disclosure, it's impossible for investors to know when and how they are being applied," New York City Comptroller Scott Stringer said.

The **European Central Bank (ECB)**, asserting its new role as the Eurozone's chief bank supervisor, advised lenders not to dispense too much of their profits in dividends to shareholders or in reward packages to executives, in order to gird themselves for global financial stress. Banks should be restrained in paying out dividends, the central bank said in recent recommendations, because of "a challenging macroeconomic and financial environment that puts pressure on banks' profitability," reported the *New York Times.* Lenders should be preparing for regulations that will require them to use more of their own money, or capital, to do business, the ECB's new supervisory arm said. Banks that failed stress tests last year — mainly in Italy — were told not to distribute dividends at all until they had met capital requirements. The ECB said it would begin a thorough review of lenders' executive pay, another measure intended to ensure that banks are not distributing money that should be used to increase capital. "Banks should base their dividend policies on conservative and prudent assumptions," said Danièle Nouy, head of the supervisory unit, "so that after any payout they can still fully cover their current capital requirements and prepare themselves to meet more demanding capital standards." The ECB took responsibility for supervising banks last November, as part of an attempt to ensure that lenders in all 19 Eurozone countries are subject to equally rigorous oversight. The ECB said it had sent letters to the 123 large banks that it supervises directly, and asked national supervisors to deliver the same message to smaller banks in their jurisdictions. The review of bank bonuses and other pay is intended to make sure that executive compensation is "consistent with a bank's ability to maintain a sound capital base," the statement said.

The Financial Times reported that business minister **Vince Cable** will call for remuneration committees to set ceilings on the executive pay rises. Proposals will be in the government's review of the first year of his '*say on pay'* reforms to be published in the coming weeks. Those reforms gave shareholders a binding vote on pay policy and exit payments and attempted to improve the transparency of executive packages in annual reports. The omens for pay-capping are not good. In the wake of the $1m annual ceiling on non-performance-related earnings, introduced by President Clinton in the 1990s, any self-respecting ceo earning less than that immediately felt underpaid. Predictably, there was an explosion in complex, apparently performance-related, incentive plans which now litter the field on both sides of the Atlantic and which companies such as Tesco are starting to simplify.

A consensus is emerging, even from some sections of business, notably the **Institute** of **Directors,** that average remuneration of more than £4m for FTSE 100 ceos is too high.

BNP Paribas slashed the bonuses of its top executives to reflect last year's $8.9bn fine for US sanction violations that almost wiped out its annual profit. The move is the latest sign of how the run-in with US regulators continues to reverberate at

France's biggest bank by assets. BNP has already suffered the departure of several senior bankers and had its ability to clear US dollar transactions curtailed as a result of the fine. Ceo Jean-Laurent Bonnafé had his annual bonus cut by about a third to €1.2m. He had a long-term share scheme worth €883,565 cancelled and his potential award for a future five-year incentive scheme cut by 70 percent. In total he has suffered a €1.87m pay cut, but still took home €2.4m. Baudouin Prot, his predecessor who stepped down as chairman last year, had all his variable pay cancelled, meaning he received only his pro rata salary of €779,167 for the year to November.

Burberry's board says ceo Christopher Bailey's target pay is £6.1m - that's what they expect him to earn in 2014. He'll get £1.9m - as salary, pension, other benefits plus an annual 'allowance' - and £4.2m for hitting his targets. If he and Burberry excel, he could earn another £4.2m. So Bailey's annual pay can range between £1.9m and £10.3m. Companies now have to publish a single figure for the total remuneration paid to each of their executive directors over the past year. The idea is that this will make pay clearer so that there's now a standard way of comparing how different companies pay their executives. However, what this single figure summarises is fixed pay (Bailey's £1.9m) and backward-looking variable pay. That's bonuses paid in cash or shares for past performance (Bailey's bonus could be up to £2.2m). Even if this pay is held back (deferred), it will be included as long as there are no further performance conditions. What is not included in the single figure are forward-facing awards - those that depend on future performance. Burberry's executive share plan carries performance conditions measured over the next three years - and most of Bailey's pay (£6.2m) rides on these. These awards won't be included next year; they'll qualify only when the performance tests have been done in 2017. Instead, what will be included will be any awards maturing that were awarded to him over the past few years in his previous solo role as chief creative. Awards arising from past performance have been earned; awards dependent on future performance haven't. This misleads the unwary, said *Investors' Chronicle* - it's easy to assume that this single figure tells us about recent executive pay awards. It doesn't.

Credit Suisse announced a 25 percent boardroom pay cut and reduced bonuses for other top staff while setting out a range of measures to tackle the surge in the Swiss franc. The pay cuts are the Zurich-based bank's response to the more than £2bn in penalties agreed with US authorities last year for its role in helping Americans to evade taxes. As global banks face renewed scrutiny, Credit Suisse said its overall 2014 bonus pool would be cut by nine percent, while directors cut their own pay by a quarter and top management agreed to a 20 percent bonus cut.

IBM brought back annual performance bonuses for its ceo and her top lieutenants last year despite falling profits and a tumbling stock price, a regulatory filing showed. The technology company, which has posted lower profits for 11 quarters in a row as it struggles to transform itself into a cloud-based software and services company, withheld annual bonuses in 2013 at the executives' own request. The bonuses returned as a feature of IBM's executive compensation for 2014, despite the fact that IBM's net profit from continuing operations fell seven percent last year and its stock shed about 14 percent. IBM ceo Virginia Rometty will get a $3.6m annual incentive payout for 2014, while cfo Martin Schroeter and three other executives or advisers were listed as getting smaller annual incentive payouts Rometty is due to receive a base salary of $1.6m for 2015, her first increase from the $1.5m she got in each of the last three years after taking up the post of ceo at the beginning of 2012. In addition, she is due to receive a target annual incentive award of $5m for 2015 and a long-term stock grant worth $13.3m, which would be payable in 2018.

For the second time in recent months, **Silicon Valley** executives facing no allegations of misconduct are handing back their bonuses in claw-back actions initiated by the US Securities and Exchange Commission. Former **Saba Software** cfos William Slater and Peter Williams III agreed to pay back the $337,375 and $141,992, respectively, that they received in bonuses and stock profits during periods when Saba Software overstated revenues, even though they weren't alleged to have knowledge of the underlying accounting fraud, the SEC announced. The claw-back action, brought under Section 304 of the *Sarbanes-Oxley Act*, comes after Saba Software's former ceo agreed to pay back $2.5m under the same provision as part of the company's settlement of accounting fraud charges. Section 304 requires public company ceos and cfos to pay back bonuses and other incentives after companies revise financial statements because of misconduct under the federal securities laws. Jina Choi, director of the SEC's San Francisco regional office, said that even executives who are not complicit in a fraud *"have an obligation to return their bonuses and stock sale profits to the company for the benefit of the shareholders who were misled."*

France

The Macron economic legislation, now about to be implemented, improves significantly the French tax and legal treatment of awards under qualifying share plans, making them very attractive compared to cash bonuses or stock option plans, said lawyers *Sullivan & Cromwell*. The Macron Draft Bill (*projet de loi pour la croissance et l'activité*) was approved on January 19, by the special commission of the French National Assembly and was later discussed in the French parliament. Shares granted to French resident beneficiaries under qualifying share plans ('*attribution d'actions gratuites*' or AGA) will benefit from a much improved tax and legal regime. The total duration of the vesting and holding periods will be reduced to two years (instead of four years), and the social security tax paid by the employer will be reduced to 20 percent (from 30 percent) and will be paid only if and when the shares are effectively attributed to the beneficiaries. Finally, the income tax treatment of the beneficiaries will be alleviated, as the entire gain realised by the beneficiary will benefit from the CGT regime. Such modifications will apply to qualifying share plans established by foreign companies for French resident employees. The Macron legislation will be enacted in spring and will apply retroactively to qualifying share plans approved by shareholders' meetings held as from January 1 2015.

Currently, the total duration of the vesting period and holding period must be at least four years. Under Macron, the minimal vesting period will be reduced to one year. In addition, the draft law provides that the cumulative duration of the vesting and holding periods must be no less than two years. Beneficiaries of stock awards under qualifying share plans potentially realise two separate gains: one upon acquisition of the shares once vested, which is equal to the fair market value of such shares at the vesting date (the **acquisition gain**) and a gain (or loss) upon the subsequent sale of the shares, which is equal to the difference between the sale price and the fair market value of the shares at the vesting date (the **sale gain/loss**).

Under the current regime, the acquisition gain is treated as salary, and as such is fully taxable at standard income tax rates. The sale gain/loss is subject to capital gains tax treatment, under which tax reductions are available depending on the number of years the shares have been held (tax reduction of 50 percent for a holding period between two and eight years, and 65 percent above eight years). Under Macron, both the acquisition and sale gains will benefit from CGT treatment. The acquisition gain will therefore benefit from the same 50/65 percent reduction as the sale gain, if any. The holding period for the application of such reductions will start as from the vesting date. If a sale loss is recognised upon the sale of the shares, such loss would be deducted against the acquisition gain. Taxation on both the acquisition gain and the sale gain/loss will be due upon the sale of the shares.

Regarding social security tax, the acquisition gain is currently subject to a specific tax of ten percent, payable upon the sale of the shares by the beneficiary, and to social contributions applicable to salary income at a rate of eight percent. The sale gain is subject to social security tax due on capital gains, at a rate of 15.5 percent. The new regime lowers the social contributions due by beneficiaries: (i) Both the acquisition gain and the sale gain would be subject to social security tax due on capital gains (at a rate of 15.5 percent) and (ii) the specific social surtax of ten percent applicable on the acquisition gain will be eliminated.

Currently, the employer is liable for social security contributions equal to 30 percent of the fair market value of the shares. Such tax is due at the date of grant, on all shares awarded to the beneficiaries and is not refunded if certain shares are not effectively acquired by the beneficiaries (for instance because of non-compliance with performance or presence conditions). Macron lowers this contribution to 20 percent, which will be due at the vesting date rather than at the grant date, and only for shares effectively received by the beneficiaries. In addition, certain SMEs will be exempt from such social security contributions, up to a fixed threshold per beneficiary.

SEC proposes disclosure of company hedging policies for in-house equities

The Stock Exchange Commission (SEC) proposed long-awaited rules that would require a public company to disclose whether its employees (including officers) and directors are permitted to hedge the company's equity securities. The proposed rules, which are mandated by Section 955 of the Dodd-Frank Act, are intended to inform stockholders as to whether employees or directors are allowed to engage in transactions to mitigate or avoid the risks associated with long-term ownership of a company's stock–and thereby eliminate the incentive alignment associated with equity ownership. Public companies are already required to disclose, in CD&A, any policies on hedging by named executive officers, if material. In addition, in 2012, Institutional Shareholder Services (ISS) announced that it views any amount of hedging of company stock by directors or executives as a 'failure of risk oversight' that may lead to voting recommendations against individual directors, committee members or the full board of directors. In response to the CD&A requirement and ISS' policy position and anticipating the implementation of Section 955 of the Dodd-Frank Act, many public companies have adopted anti-hedging policies and disclose these policies in their proxy statements. Summary of Rule Proposal The rule proposal would add a new paragraph to the corporate governance disclosure requirements in Item 407 of Regulation S-K.

Specifically, proposed Item 407(i) would require disclosure, in any proxy or information statement relating to the election of directors, of whether any employee or director, or any of their designees, is permitted to purchase any financial instruments or otherwise engage in transactions that are designed to, or have the effect of, hedging or offsetting any decrease in the market value of equity securities that are granted to the employee or director by the company as compensation or held, directly or indirectly, by the employee or director. Notably, the rule proposal does not require companies to prohibit hedging by employees or directors. The disclosure requirement would apply to all companies with securities registered under Section 12 of the Exchange Act, including smaller reporting companies and emerging growth companies and listed closed-end funds, but excluding foreign private issuers and other types of registered investment companies.

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