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it's our business

newspad of the Employee Share Ownership Centre

First civil service mutual joint-venture spin-off finally airborne

MyCSP Ltd, the first John Lewis style business created from a central government service was launched on April 30 by Francis Maude, Minister for the Cabinet Office, more than seven months later than originally planned.
MyCSP Ltd's innovative mutual joint venture model gives 500 ex-civil service employees a 25 percent ownership stake, representation at board level and a share in profits for running the civil service pensions scheme.
The new enterprise is contracted by the Government to administrate pensions for the 1.5m members of the CS scheme. It will cut costs for taxpayers, realizing annual savings of 50 percent by 2022, while improving the service, according to ministers.
The Equiniti Group's Paymaster business was announced as the winner of the hotly contested tender to join the venture with a 40 percent stake. The Government retains a 35 percent stake, in order that taxpayers can benefit as the business grows in value.
Although Mr Maude is a Tory, there was no disguising the pre-eminent role of the Lib-Dems in this apparently successful employee ownership campaign.
Maude announced that former Labour cabinet minister, Lord Hutton of Furness, would be the first chairman of MyCSP Ltd.
"Creating mutuals is a very exciting way for people on the front line of the public sector to take ownership and responsibility for the services they provide," said the peer. "They get a voice on the board and a share of any profits. I hope this model will lead to better performance and better value for the taxpayer."
Lord Hutton now takes on a leading role in the Government's plan to hand greater ownership, responsibility and power to the people running public services. Mark Lund, the former ceo of St. James's Place Capital, will chair the MyCSP Ltd Employee Partnership Trust, charged with protecting the employees' interests.
The Cabinet Office announced early last year that the company would be transformed into a mutual, but *newspad* then exclusively revealed that the original launch date had been fixed for last September. However, none of the four firms short-listed for the role of private sector partner: Xafinity, Capita, JLT and Wipro, were chosen. Furthermore, planning was not helped when some civil servants in the pensions service went on strike over the plan to turn their organisation into a joint venture.
Mr Maude said: "We no longer face a binary choice between public services delivered by state monopoly and straight privatisation. That is why I am a passionate supporter of mutuals, which will help Britain grow a more diverse economy. As a mutual, MyCSP will deliver better services for its pension scheme members, millions of pounds of savings for the taxpayer and a real sense of ownership for employees over what they do. We are transforming a neglected back-office operation into a new competitive and responsible business – the rest of the world is watching. Lord Hutton brings a real wealth of experience to his role as chairman and I'm delighted he has accepted this role."
Coalition ministers want to turn libraries, nurseries, adult social care services and other parts of the public sector into co-operatives, similar to buildings societies and the John Lewis Partnership, the iconic retailer where the shares in the business are held in a trust for the benefit of all employees.
However, the Public and Commercial Services union,

From the Chairman

The launch of MyCSP is an important milestone for the Coalition's commitment to John Lewis style employee ownership. Congratulations to the team which has overcome obstacles to get this far. No doubt the watchdogs will be observing whether it delivers. Bus demunicipalisation certainly delivered for management cadres but the jury is out on how much it helped local authorities, passengers and workers. MyCSP can serve as a serious case history.

Malcolm Hurlston

which represents civil service staff, said employees would lose their civil service status and access to the pension that they administer. The union said that despite government claims that it wanted to give employees more say over their work, it had imposed this decision without consulting staff. After a survey of the 500 affected staff, the union claimed that 94 percent did not agree that turning MyCSP into a mutual would empower staff and drive up performance and 95 percent said they wanted to retain their civil service status.
Equiniti's md Paul Bingham acknowledged that the decision to pitch for the partnership was not an easy one, particularly as his company would not own a controlling share – with the remaining 60 percent of the company split between the government and MyCSP employees.
"There is a risk that we could be shooting ourselves in the foot by creating a new competitor in the pensions marketplace," he said, adding that the mutual model was a trail-blazing idea.
Lord Hutton, former chair of the Independent Public Servants Pensions Commission, said the mutualisation was an important enhancement of public services."With the launch of MyCSP, we have the opportunity to begin the development of a new approach to delivering services, which can bring together the very best of the private and the public sector," he said.
"MyCSP Ltd is a pathfinder at the cutting-edge of public service reform. Such innovations are vital to protecting frontline services while helping to bring public spending back under control. A diverse and innovative marketplace will increase competition and outcomes. Research shows that competitively tendering public services typically produces between ten and 30 percent savings, while maintaining or improving standards. Pioneering better business models, such as the mutual joint venture, are critical to keeping Britain's public service industry ahead of global competition. Growing demand for public services in economies such as China, India and Brazil, will create significant new opportunities in a market that British businesses lead," he added.
In 2010, the UK public administration, education and health industry sector balance of trade switched from a deficit of £154m in 2009 to a surplus of £304m.
MyCSP Ltd is the first central government mutual but many already operate successfully in the wider public sector. More than £1bn worth of health services is provided by mutuals, typically local health trusts. Evidence suggests that employee ownership can boost productivity by up to 19 percent. John Lewis, one of Britain's best-known mutuals, continually tops customer satisfaction polls and has half the average staff turnover and sickness absence in the retail sector.
Hutton, a former secretary of state for Work and Pensions, added that the mutual model would allow for the merger of the public sector ethos with a private sector dynamism.
"Equiniti Paymaster will be putting capital into it to improve the IT systems significantly. This is kind of a watershed moment. We have stopped the taxpayer funding of the business."
MyCSP – which has landed a seven-year contract for administration services of the Civil Service Pension Scheme (CSPS) – has been launched at a time of change for the unfunded pension fund, which provides benefits for more than 1.5m employees.
A London Pensions Fund Authority report had suggested that an approach similar to MyCSP's shared administration services should be mirrored across the Local Government Pension Scheme. Hutton said MyCSP "really wanted to take on business" from other public sector schemes and hoped the mutual would establish itself as a leader, as he saw opportunities arising from both local government schemes and unfunded government schemes in future.

Minister is guest of honour at Centre conf

Norman Lamb, the Minister for Employment Relations, Consumer and Postal Affairs, will address delegates at the Centre's joint employee share ownership conference with the Institute of Directors in London on **Tuesday, May 15.** The minister's private office has confirmed that Mr Lamb has accepted the Centre's invitation for him to be guest of honour on the day. *See below for full story.*

Awards 2012 nominations open

Entries are invited for the Centre's annual awards 2012– this year expanded by a new award – for best plan communications. Entrants and/or their advisers have until **noon on June 5** to send their submissions to UK Director, David Poole at Centre HQ dpoole@hurlstons.com 0207 239 4971.
There are three categories:
*best employee share ownership plan for a company with more than 1,500 employees;
*best employee share ownership plan for companies with fewer than 1,500 employees; and *best communications supporting an all-employee share plan.
The criteria for entering are explained in full on our website.
The winners will be decided by a panel of three impartial judges who are experts in the area of employee equity. These judges include Malcolm Hurlston, chairman of the World Centre. The finalists will be announced during the Centre's 24th annual conference in Paris on June 21 & 22 and the awards will be made at the annual Centre dinner in London in October.

OTS to probe EBTs

The Office of Tax Simplification's review of unapproved share schemes will cover employee benefit trusts (EBTs), Centre UK director **David Poole** told the

ESOP Centre's joint annual conference held in association with STEP Jersey last week at the Royal Yacht Hotel, St Helier.

Bringing EBTs into the OTS review would give trustees a chance to make changes to areas they found difficult in the existing tax legislation, said Mr Poole, who chaired the event, despite sporting a large black eye and stitches, incurred during a soccer match the night before he flew out to Jersey.

OTS had provided five questions for feedback from trustees - on which it would welcome submissions: *1. Are there any common misunderstandings by the trustees' clients about tax issues when they first ask for an EBT to be established? 2. Do trustees face difficulties in running particular unapproved share plans - and if so, why? 3. Are there any specific areas of uncertainty for trustees as to their obligations under UK tax law? 4. What are trustees' views on HMRC guidance - is it helpful or not - and, if not, what suggestions would trustees have for improvement? 5. Finally, and very generally, are there specific areas of taxation which trustees find complex (eg IHT, CGT)?* Views from *newspad* readers would be welcome.

One obvious candidate for immediate simplification would be the disguised remuneration rules, which were the subject of **James Hodgson-Barker's** opening presentation. James, of Mark Davies & Associates/ nondom.com, broke down the complex rules into a gateway through which the remuneration agreement passes - this provided a framework for understanding how to cope with the rules in a structured way. Overall, James said, it should be possible to avoid too many problems from the legislation. but trustees must ensure that they are comfortable with all of the rules and their application to ensure that they avoided the pitfalls.

Amanda Flint's presentation helped trustees to avoid these traps by addressing specific forms of unapproved share plans that use EBTs and asking whether it was still viable to run them in the same way. Amanda, formerly of BDO LLP, said it was best to review arrangements in light of the DR rules as there companies could still enjoy many benefits through the use of an EBT. Both Amanda and James explained that HMRC had left the industry in the rather uncomfortable position of having to rely on guidance instead of the legislation. This was well and good, until something was challenged in the courts, where guidance would not stand up.

After two technical presentations on the possible effects of the disguised remuneration rules, **Paul Malin,** of Haines Watts, told delegates about what was happening in practice. Paul's clients are companies that, for whatever reason, want to negotiate a settlement with HMRC. There can be several reasons for this: a company is being sold, an original shareholder is contemplating retirement, or after the death of a leading shareholder. HMRC wrote to companies with EBTs last year offering a settlement opportunity. This was by no means a tax amnesty or a deal, but since there was a guarantee of no penalties, it was still an attractive offer. Paul said that in his work he found that HMRC were willing to engage because from their point of view it would avoid lengthy and costly legislation. "My clients come to me for certainty," said Paul, "My job is to establish the facts based upon evidence. Once the settlement has been agreed, my clients are able to move on with certainty."

He said that though the deadline for engagement with HMRC had passed, he found that they were still open to approaches from companies.

William Franklin, of Pett, Franklin & Co. LLP, warned delegates that the new IFRS10 would come into being for accounting periods beginning January 2013. The new financial reporting standard would apply where UITF38 was currently used, said William. Though EBTs are not specifically named, the control test specified for the new rules may well catch them. IFRS10 would have several consequences: firstly, loans to EBTs would be recognised as assets, making it easier to spot old s419/s455 CTA 2010 liabilities. William thought the changes might make it easier to set up John Lewis type companies, as assets in an EBT would not be automatically deducted from distributable reserves. It would be possible to grandfather existing treatments, but it was unclear how this would work with new transactions or EBTs, with potential for confusion if two different systems were in use. William is preparing a more detailed note and will be happy to provide this to anyone who emails him with a request – William.franklin@pettfranklin.com.

George King IV, of RBC Wealth Management, gave some reasons for hope in the equities markets following years of turmoil. The first few months of 2012 had been fairly favourable for equities as market fears over possible economic shocks subsided and the after-effects of the disaster in Japan were overcome. There were, however, many more factors that could derail the sluggish global recovery – such as a major bank failure or sovereign default. Contagion from such an event would affect not only the Eurozone or even developed nations, but would spread around emerging markets worldwide. The 80s & 90s were special decades not to be seen again because of one off factors, such as the fall of the Iron Curtain and the opening of China. However, George said, the death of equities had been predicted before in the 70s – before the most sustained period of equity growth ever! Companies now had a lot of cash on their books, the highest level since the 50s, meaning large dividend payouts, share buybacks and increasingly M&A activity. All these factors pointed towards equities looking reasonably priced compared to debt, good news for the employee equity world.

In her offshore update, **Rosemary Marr**, vice president of STEP Worldwide and a research fellow of the Centre, said that the job of trustees had become more difficult in the wake of the financial crisis due to the vast amount of new regulation and legislative changes. Chief among these was FATCA, which places new burdens upon any trust with American beneficiaries or assets. Rosemary warned delegates that the time would

soon pass before these new burdens were imposed and trustees should proactively prepare for it. Rosemary was pleased to report that Jersey and Guernsey were working closely together in more areas, including a financial ombudsman, which had her support.

More than 45 delegates received the conference handbook introduction from Centre chairman **Malcolm Hurlston,** in which he warned of HMRC's new disguised remuneration powers to question and challenge the use of tax structures it believes are being used to deny the Exchequer its dues. "The legislation was introduced to tackle complex arrangements involving employee benefit trusts or other vehicles when used to reward employees, which seek to avoid or defer the payment of income tax or NICs - mainly family sub-trust arrangements and EFRBS," wrote Mr Hurlston. "Thanks to concerted lobbying by the ESOP Centre and allies, share schemes have been, on the whole, unaffected by the new rules. Whereas at one point there was genuine industry concern that this would make the administration of share schemes unfeasible, it was possible to reach agreement on exceptions and safe-harbours for *bona fide* share schemes, provided they are structured in a certain way. (Whether all of this will be usurped by the introduction of a general anti-avoidance rule remains to be seen.)

"However, there are many traps for the unwary. Meanwhile, HMRC has begun its pursuit of unpaid taxes. Even as the government looks at ways in which EBTs can be used to spread the use of employee share ownership, the high-profile Rangers football club case has brought them a degree of infamy, which has damaged their reputation. Now in some cases EBTs are viewed as toxic even where there is no tax avoidance purpose at all. Companies are taking advantage of HMRC's offer of negotiated settlements made in a letter to companies last year. HMRC are by no means offering an amnesty or even a deal, but since then they have a reported 280 further targets in the pipeline, avoiding too many lengthy and costly legal cases is essential," he added.

Share plans returns warning

The UK annual share plan returns for the last tax year must be filed with HM Revenue & Customs **before** July 7 2012. Significant penalties can apply if the returns are not filed with HMRC in time, reports Centre member **Bird & Bird.**

Unapproved plans

HMRC requires that companies report the grant and exercise of unapproved securities options and the acquisition and disposal of other employment related securities and other reportable events on Form 42, which - for the 2011/2012 tax year - can be found via the following link:
www.hmrc.gov.uk/shareschemes/form42-2012.pdf
Guidance on completing Form 42 can also be found via the following link:
www.hmrc.gov.uk/shareschemes/form42-guidance-2007.pdf

Approved plans

Each HMRC approved plan has a specific return form.

Enterprise Management Incentive Options (Form 40):
www.hmrc.gov.uk/shareschemes/emi40-2012.pdf
There is no requirement to report the grant of EMI options on Form 40.

Company Share Option Plans (Form 35):
www.hmrc.gov.uk/shareschemes/csop-form35-2012.pdf

Save as You Earn Plans (Form 34):
www.hmrc.gov.uk/shareschemes/form34-2012.pdf

Share Incentive Plan (Form 39):
www.hmrc.gov.uk/shareschemes/sip-form39-2012.pdf

It is important that companies now start collecting the information required in order to complete the relevant return(s) so that they are filed with HMRC in a timely and accurate way. Forms must be filed with HMRC **before July 7 2012.** The Bird & Bird LLP Employee Incentives and Benefits team can give advice and assistance in completing the annual returns.

Centre push on employee financial education

The Centre announced a partnership with the Money Advice Service to highlight the importance of employee financial education to their employers. Both bodies plan to lobby the government for more promotion of, and support for, financial education. David Poole, UK director at Esop, said: "Everyone knows financial education is a good thing, but few employers actually introduce a programme." The Centre and MAS have set up meetings with employers to discuss what they are doing about employee financial education and update them on the latest industry developments. Our main contact at MAS is Stuart Bailey, whom many members know well, not least from his Abbey National employee benefits dept. days.

Childbase employee ownership success

Mike Thompson, ceo of Childbase, has told *Newspad* how he built up the hugely successful employee-owned company from scratch. "I started Childbase 23 years ago with one nursery, four staff and 20 children. We set up the employee benefit trust about 12 years ago. Initially that was meant to share the success of the company across a wider base. It was based upon the Childbase All Employee Share Plan (now SIP) of buying one share and getting one free under the Government's approved scheme. We started that with a dilution of our share holding - by gifting shares to that trust. Subsequently the company has acquired the shares from my father into the trust and continues to run the share purchase scheme, with two for one offers and on a couple of occasions free share issues - all within Government approved arrangements."

Mike's father was Sir Peter Thompson - ex ceo of the former state owned National Freight Corporation, which was privatised through an employee buy-out, in which drivers and staff were encouraged to own the shares. However, that company was floated in the late 1980s, halting the employee ownership experiment.

"We have now set up our Trust in Scotland as they have no 'shelf life' there as they do in England. The company is now owned 60 percent by employees, I still have 16 percent and one or two external shareholders remain. Everyone has now signed up to the sale of shares going forward, changes to the Articles have been agreed, and now on departure all shares must be sold back to the Trust. That is non negotiable, " said Mike. "There is a Golden share, which is now held by an independent Board who have the right, and only them, to agree a sale of the company in exceptional circumstances. I have one of the votes on that Board and it is only a universal decision that allows a sale to take place."

Has Eso made a difference to the company? Mike has no doubts on that score: "Childbase today is: -A Times 100 company - still the only one in this sector to achieve that status- Its OFSTED inspector results are unparalleled in the sector -50 percent for Childbase – against a sector average of 12 percent - Profits are up by more than 200 percent in six years -The employee share take rate up is growing -Dividend yields are growing and annual staff bonuses are collectively worth £650,000 pa." By the end of 2009, the staff payroll had grown to 1,300, the annual turnover was £25m and operating profits had risen 18 percent to £2.7m.

Mr Thompson added: "Above all, there is a real belief that this company is the responsibility of the many, not the few, and the success is shared throughout the organisation."

Employee-owned Circle in NHS row

A row has broken out over a debt-ridden NHS hospital being handed over to a 49 percent employee owned company that will keep a large chunk of the millions of pounds in savings it will seek to make. Circle, which is running the Hinchingbrooke Health Care Trust in Cambridgeshire, insisted it will improve standards despite claims that it will need to make what have been described as major cuts. The Health Service Journal (HSJ) published a report saying the hospital will need to make surpluses of at least £70m during the next decade if it is to clear its debts and meet Circle's contracted share. A letter deposited in the House of Commons library by Earl Howe, a junior health minister, and uncovered by the HSJ, details for the first time the terms of the deal to hand running of the hospital to Circle.

Fears surfaced that the deal could pave the way for wholesale transfers of hospitals to the private sector. About 20 hospitals have run into financial difficulties and Labour accused the government of wanting to see more of these deals under its shake-up of the health service, a claim which ministers deny. A statement from the HSJ said: "The first £2m of any year's surplus goes to Circle; the company then takes a quarter of surpluses between £2m and £6m and a third of surpluses between £6m and £10m. The terms mean the trust, which has an annual income of around £100m, will need to make a surplus of at least £70m to clear its debts and 44 percent of that money would go to Circle."

Has the OTS done enough?

Mike Landon, of remuneration advisers MM & K, who is the Centre's representative on the Office of Tax Simplification's (OTS) employee share schemes review committee, told *newspad* that he is concerned about the possible axing of the approved Company Share Option Plan (CSOP). Mike suggests that companies which use CSOPs should write to the OTS to explain why they are useful.

He expressed disappointment that the OTS was not given longer to consider simplifications to the tax-advantaged share plans and mused that a once-in-a-generation chance to modernize them could be lost.

HMRC was on the verge of publishing its consultative paper in response to the OTS report on tax-advantaged share plans as this edition of *newspad* went to press. A full report will appear in the next issue.

Mr Landon told the Centre: "On March 6, the OTS published the final report of its review of the four tax-advantaged employee share plans – approved Share Incentive Plans (SIP), approved Savings-Related Share Option Plans (SAYE), the CSOP and Enterprise Management Incentives (EMI). This report represents an excellent start towards simplifying the complex tax legislation governing these plans.

"A worrying development is that the OTS has called into question the future of the CSOP, which is by far the simplest and most flexible tax-advantaged share plan and the only one available to many companies. Despite their extensive research, the OTS "found it difficult to identify clearly the types of companies using the CSOP". The report recommends that further work should be carried out to investigate whether the CSOP is still relevant for UK business. Depending on HMRC's response to the OTS report, companies with CSOPs may need provide convincing evidence to the government of why they are a valuable tool for motivating and retaining employees.

"Assuming that further investigation demonstrates that CSOPs are worth retaining, the OTS recommends that they should be merged with EMI to form a single discretionary share option plan. The limit to the value of shares under EMI options (which the Budget announced will be increased from £120,000 to £250,000) will remain for companies which currently qualify for EMI and the £30,000 CSOP limit will apply to other companies. Merging the two plans would result in some welcome improvements for CSOPs, for example:

* It would be possible to grant options at a discount,

or even at nil cost (though any discount at grant will be taxed at exercise, as for EMI)
*The three-year period before options can be exercised with income tax relief would be removed; and
* Certain restrictions, imposed by HMRC, on the exercise of discretion by companies would be removed.
"These useful improvements are, however, complicated by introducing them through a two-stage process and a continuing distinction between EMI-compliant and other companies. It could be much simpler just to amend the CSOP legislation instead," said Mr Landon.
"If the Government does decide to introduce a single tax-advantaged discretionary share plan, this should not be confined to share options, but should also include awards of the full value of shares, such as conditional and deferred share awards.
"During the first six months of its share plans review, the OTS carried out some extensive research into how tax-advantaged plans are used, their effectiveness and the opinions of companies, their advisers and administrators about how they could be improved. This has resulted in a large number of detailed recommendations for improvements, which include:
Good leavers: extending the range of circumstances in which employees who leave employment can exercise options or take shares out of the plan with income tax relief.
Retirement: making the provisions for employees who retire consistent for the three approved plans.
Takeovers: allowing income tax relief when options have to be exercised or shares removed from the plan on a cash takeover.
Tax charge on withdrawal from SIP: reducing the period before partnership, matching and free shares can be removed from a SIP tax-free from five to three years
£1,500 limit on dividend shares: removing the upper limit on the amount of dividend that can be reinvested in a SIP in any tax year.
EMI 'excluded activities': reducing the number of activities that exclude companies from offering EMI options.
"The other bold recommendation is to replace the current process for obtaining HMRC approval for SIP, SAYE and CSOP with a self-certification process, as already applies for EMI. Companies will welcome any reduction in the time it takes to secure HMRC approval for plans, which has increased markedly over the last year due to reductions in the number of their share scheme advisers. However, many are reassured by the fact that their share plans have official approval. They will be alarmed by the OTS' related recommendation that if HMRC discovers that plans do not in fact meet the requirements for approval, the companies will be liable for the underpaid income tax and will not be able to recover it from their employees."
Mr Landon added tellingly: *"However, there is much more which could be done to remove the unnecessary detail from the share plan legislation. The OTS did not have time to carry out a more fundamental review of why there should be so many requirements for tax relief and of which ones are strictly necessary. Unfortunately, by issuing a "final report" at this stage, there is a danger that this once in a generation opportunity to modernise share plans will be lost."*
Croner Human Resources commented: "On the assumption that further work into CSOPs concludes in favour of their continuing relevance, the OTS recommends that the current CSOP and EMI schemes be merged. Under the current regime, if a company that has previously granted EMI options ceases to qualify for the EMI (eg because it grows too large) and wishes to continue offering tax-advantaged share options, it must then introduce a CSOP scheme with the additional administration that this entails. The OTS recommends the introduction of a new discretionary scheme that would effectively merge the current CSOP and EMI schemes. A phased introduction is recommended. The first phase would be mainly administrative, encompassing limited changes to EMI qualifying companies. The second phase would be to extend and simplify the new scheme to remove some of the limitations applicable to non-EMI qualifying companies and to introduce flexibility for all companies using the scheme."

HMRC response on managing corporate tax disputes

HMRC responded to the Public Accounts Committee's Report on its process for resolving tax disputes with large companies. HMRC noted that it would be unlawful for it to disclose taxpayers' confidential information to a Parliamentary Committee, but accept that its internal processes might be improved. It promised to appoint a new assurance commissioner responsible for overseeing all large settlements; to refer cases above £100m to three commissioners for approval and to carry out a review of the processes used in all settled cases. Settled cases will not be reopened, said **Deloitte.** HMRC confirmed that it would not put settlements currently in progress on hold until the new appointment is made. See http://tinyurl.com/7w5rny3

FATCA delayed until 2014

Enacted two years ago as part of the HIRE Act, the Foreign Account Tax Compliance Act (FATCA) is US tax legislation designed to combat foreign tax evasion, writes Centre member **Solium Capital**. FATCA increases information reporting requirements by foreign financial institutions (FFIs), non-financial foreign entities (NFFEs) and US citizens holding financial assets outside the United States. Service providers have to wade through almost 400 pages of regulations and operational logistics. "Essentially, the US Treasury will no longer turn a blind eye to the billions of dollars lost annually to sophisticated offshore investment strategies. FATCA might as well stand for '*No More Mister Nice Guy,*' since it signifies

a crackdown on these activities, and failure to comply can result in hefty penalties. US taxpayers, financial entities inside and outside the US, and foreign companies conducting stock plan administration for US citizens should be pay close attention, especially considering all securities of non-US companies owned by US taxpayers will be subject to reporting. Those securities include stock options, SARs, RSUs and any stock acquired under stock compensation programmes," said Solium.

FATCA imposes a new 30 percent withholding tax on US source fixed or determinable annual or periodic income that is described in applicable US Treasury Regulations (e.g., interest, dividends, rents, salaries, wages), and on gross proceeds from the disposition of any property of a type that can produce any of these income or profit sources.

FATCA withholding was originally scheduled to apply from next January 1, but its enactment has been delayed for one year, in light of the significant practical difficulties for market participants to develop compliance, reporting, and withholding systems necessary to comply with this highly complex regime in such a short time frame. Accordingly, the IRS has decided to delay the original effective date and provide for a phased implementation. Withholding agents will be required to act on withholdable payments starting in January 2014, and on gross proceeds starting in 2015. For 'pass-through' payments, participating FFIs will be required to withhold on withholdable payments starting in 2014, and on all other pass- through payments starting in 2017.

Last February, the IRS released of proposed regulations for the next phase of implementing FATCA, which targets non-compliance by US taxpayers using foreign accounts. Simultaneously, the US, France, Germany, Italy, Spain, and the UK issued a joint statement outlining a potential intergovernmental framework for FATCA. Under this framework, much of the information required by FATCA would be collected directly by foreign governments and shared with the US, as per existing bilateral tax treaties. Such an approach, if adopted, could eliminate withholding obligations and the requirement to enter into a separate disclosure compliance agreement for FFIs organized in partner countries. To avoid the withholding tax, FFIs will need to either become a so-called 'participating FFI' by entering into a disclosure compliance agreement with the IRS or otherwise meet certain requirements set out in the proposed regulations to qualify as a 'deemed compliant FFI.' Any FFI that (a) is not a deemed compliant FFI, and (b) fails to qualify as a participating FFI will be subject to the 30 percent withholding tax beginning January 1, 2014, write lawyers Orrick Herrington & Sutcliffe LLP. FATCA withholding will not apply to any payment under any obligation outstanding on January 1, 2013, or from the gross proceeds from any disposition of such an obligation. The proposed regulations clarify that the term obligation includes a line of credit or a revolving credit facility. The categories of deemed compliant FFIs described in the proposed regulations are broader than the categories of deemed compliant FFIs described in prior guidance. The proposed regulations provide for two general types of deemed compliant FFIs: (x) registered deemed compliant FFIs and (y) certified deemed-compliant FFIs. A registered deemed compliant FFI generally is required to register with the IRS to declare its status as deemed compliant and to attest to the IRS that it satisfies certain procedural requirements. The categories of registered deemed compliant FFIs are (a) local FFIs, (b) non-reporting members of participating FFI groups, (c) qualified investment vehicles, (d) restricted funds, and (e) FFIs that comply with the requirements of Section 1471(b) under an agreement between the United States and a non-U.S. government. The certified categories of deemed compliant FFIs are (i) non registering local banks, (ii) retirement plans, (iii) non-profit organizations, (iv) some owner-documented FFIs, and (v) FFIs with only low-value accounts.

The proposed regulations refine the definition of a 'financial account' (in the case of an FFI, an account with respect to which FATCA applies) to focus on traditional bank accounts, brokerage accounts, money market accounts, and interests in investment vehicles, and excludes most debt and equity securities issued by banks and brokerage firms, subject to an anti-abuse rule.

CONFERENCES

Centre-IoD share schemes for SMEs: May 15

The Centre's joint conference with the **Institute of Directors** on **Tuesday May 15** will focus on the options available in Esos for small and medium businesses (SMEs). The increases in limits and extension of Entrepreneurs' Relief, announced in the Budget, gave a welcome boost to SMEs planning the installation of employee share schemes and has encouraged more to attend this full day conference, which takes place at the Institute's HQ at 116 Pall Mall in central London. News that **Norman Lamb**, the 'share schemes minister,' will speak to delegates (see front pages) will swell delegate ranks above the **85** already registered. Mr Lamb is tasked with delivery of the Coalition's promised minimum ten percent share offer to employees of the re-organised Royal Mail. His ministerial appointment came as part of the enforced government mini-reshuffle following the resignation of former Environment Secretary Chris Huhne, who has appeared in court, together with his ex wife, accused of perverting the course of justice over a road traffic offence committed almost a decade ago. This necessitated the promotion of Lamb's predecessor Ed Davey to Cabinet rank as Environment Secretary.

Tickets for the Centre-IoD event are still on sale for £360 + VAT for members or £460+VAT for non-members - email dpoole@hurlstons.com to reserve a

place. A comprehensive agenda will take directors of smaller companies through a step-by-step guide to what employee share incentives could do for their business and how to implement such a scheme. Introductory speeches will be given by **Malcolm Hurlston** and **Roger Barker**, Head of Corporate Governance at the IoD. **Ian Murphie** of **MM&K** will give an overview of *the pros and cons of share schemes*, **David Pett** of **Pett, Franklin and Co. LLP** will kick off the session on *EMI with an overview of the scheme and its rules*. **David Craddock** will present *Enterprise Management Incentive case studies* and then **Amanda Flint** of **BDO** will ask: *What the options are if a company does not qualify for an EMI plan?* **Matthew Findley** of **Aon Hewitt** will cover *Plan implementation nuts and bolts* in his presentation, followed by **Catherine Gannon** of **Gannons Solicitors,** speaking on *How to implement a share scheme without racking up legal costs*. **Peter Matthews** of **RM2 Partnership** will explain *employee engagement strategies* and **Colin Kendon** of **Bird & Bird** will discuss *Exit solutions*. **Robert Postlethwaite,** of his eponymous share schemes advisory & legal practice, will run through *the options for using share schemes in succession planning* and finally **Ron Forrest** will deliver a case study about **Perkins Slade Ltd,** *where there is an EMI scheme, a SIP and an element of succession planning to bring the* theory *to life*.

PARIS: June 21 & 22

Delegates at the Centre's 24th annual conference at the four-star Millennium Paris Opera Hotel on **Thursday June 21 and Friday June 22** 2012 will learn about the worldwide Eso plan installed by Schneider Electric, one of the world's energy giants – with a payroll of 130,000 employees in more than 100 countries. Schneider Electric's global reward equity director **Caroline Labregere**, will deliver this key case study.

Delegates will be able to doorstep final proposals being drawn up by the UK government for major legislative and regulatory reform in the employee ownership sector. Speaker **Graeme Nuttall**, share scheme adviser to the Coalition Government and partner at Centre member Field, Fisher Waterhouse is working with Norman Lamb MP on the government's employee ownership strategy. Graeme's audience will include a senior civil servant from the Business Department (BIS), who will monitor closely the reactions of delegates to the plans, which Graeme will outline. His slot title is: *Driving employee share ownership into the mainstream British economy.*

Leslie Moss, practice leader, human capital consulting, Aon Hewitt, will launch the executive reward segment by discussing: '*What's happening to executive pay?'* He will be followed by **Joe Saburn**, of New York law firm Norris McLaughlin & Marcus, with his slot entitled: '*Shareholders finally get to speak - the practical impact of 'Say On Pay' in the US'* while **Patrick Neave** of the investment directorate, Association of British Insurers, will tackle: *The new parameters of executive remuneration.* Centre international director **Fred Hackworth** will moderate a delegate debate on key issues*, including executive reward, tax incentives and whether the more widespread use of Eso can help fuel the economic recovery.*

Eric S Smith of Consulting Services Support Corporation and **David Hildebrandt** of Kirton & McConkie (both USA) will discuss: *The 'Perfect' Global Share Plan: Opportunities and Obstacles*; **Alasdair Friend** of Baker & McKenzie LLP will speak about: *The use of Employee Benefit Trusts and Disguised Remuneration*; **Sara Cohen** of Lewis Silkin LLP will speak about *a John Lewis type employee benefit trust;* **David Craddock** of David Craddock Consultancy Services on: *The Third Way: Eso is beneficial to all; it works and improves productivity;* **William Franklin** of Franklin, Pett & Co. LLP on: *Share Based Payments Revisited;* **Colin Kendon** of Bird & Bird will outline: *The Impact of the revised Prospectus Directive on employee equity issuers within the EU*; **Prof. Jens Lowitzsch** of the European University Viadrina, Frankfurt, on: *EU institutions promote Employee Share Ownership/EFP and launching an EU-wide Esop model* and chairman **Malcolm Hurlston** will deliver a keynote speech on: *Better organised incentives for ceos could help speed the recovery.*' He will discuss *The increasing involvement of trade unions in employee share ownership* as well. **Mike Pewton** of Global Share Plans will unveil: *'Decisions you need to make when running a global share plan.'* with reference to client case histories.

Henri Malosse, president elect, European Economic & Social Committee and international director of the French Chambers of Commerce will discuss employee financial participation (Eso) as a means of developing corporate social responsibility and as a moral code of conduct applied to the strategic and operational management of a business, with examples from French SME companies. Sami Toutounji and Katia Zaboussova of Shearman & Sterling, Paris, will deliver a presentation entitled *'The French exception in stock plan design.'*

Our special **package deal** allows members to extend their stay in Paris over the weekend at the same discounted room rate that the Centre has obtained. The daily room supplement for double person occupation is only **€20,** so bring your partner or friend. The hotel is in Boulevard Haussmann, a stone's throw from the Place de L'Opera (see hotel website at**:** http://www.millenniumhotels.com/fr/fr/millenniumparis/gallery/index.html)

Registration will secure two nights half-board accommodation in the conference hotel, as the Centre block books rooms, to make things easy for all. The package deal prices for this conference (no VAT is charged on fees) are:

Centre members	Non-members
Practitioners (service provider)	
£935	£1,450
Plan issuers	
£625	£775

There is a reduced price **conference-only** option this year, which may appeal to those who do not require accommodation during the conference. Whether you plan to attend as a speaker or as a delegate, please contact international director Fred Hackworth at: fhackworth@hurlstons.com asap. More than 30 people have already registered for this event.

DAVOS 2013: The Centre's 14th Global Employee Equity Forum will take place on **Thursday Feb 7 and Friday Feb 8** at the five-star Belvedere Hotel. The Steigenberger Group's MD for Switzerland, Conrad Meier, has assured the Centre that service standards at the Belvedere will be impeccable. Mark these dates in your diaries and get sign-off to attend.

Commission confirms UK/Swiss Agreement complies

The European Commission has announced that the UK/ Switzerland Agreement on withholding tax complies with EU law, as does the Germany/Switzerland Agreement, said Centre member **Deloitte.** The legislation to implement the Agreement in the UK is included in the Finance (No 4) Bill. Austria has also signed an agreement with Switzerland, though the Commission has yet to examine this. It has since been confirmed that the same formula used to calculate the one-off payment for the past in the Germany/ Switzerland Agreement will be incorporated into the UK/Switzerland Agreement as it is more beneficial to the UK than the previous draft. See http://deloi.tt/IBlqco

COMPANIES

Electronics and electrical engineering group **Siemens Southern Africa** has bought out black economic-empowerment (BEE) partner New Africa. The 15 percent shareholding previously owned by New Africa Millennium Telecommunications (Pty) Ltd has been bought by a newly established Siemens Employee Share Ownership Trust. Eligible previously disadvantaged employees of Siemens Ltd and its subsidiary companies in South Africa will be the beneficiaries of this Trust. "The ESOT is our commitment to broad-based black economic empowerment that will essentially allow eligible employees to share in the long-term success of the company", says Siegmar Proebstl, CEO of Siemens Africa.

Bonus corner

The deadline expired in the government's consultation exercise on allegedly excessive executive reward packages, in which businesses were invited to submit proposals for 'fairer' reward scales, leaving Coalition ministers to ponder over what action to take. The **Department for Business** (BIS) consultation followed recent claims that executive pay-outs sometimes do not match company performance and that the 'issue' could harm not only the corporate sector, but the UK's economic prospects as a whole. A BIS paper said that median total ceo remuneration in FTSE 100 companies rose four-fold – from £1m to £4.2m – between 2008 and 2010. BIS criticised the scale of the increases, which it said were far, far higher than FTSE 100 share price rises, retail price increases, or average pay over the same period.

Ecomonist **Andrew Smithers** added to the unease by pointing out that the corporate bonus culture is deterring companies from making major investments, as executives concentrate instead on short-term returns for shareholders. While business investment has been declining in both the UK and the US, profit margins are rising, leaving many large companies with huge cash piles, thus forcing beleaguered governments to keep spending in order to boost their sagging economies, said Smithers. The results of this 'new' corporate behaviour were ever widening disparities in incomes in the US and UK. Governments should demand from large companies proof of increases in output and investment as requirements before any executive bonuses could be paid out, he added.

BIS has proposed an annual binding shareholder vote on executive remuneration policy, a binding vote on any exit payments above one year's salary, increasing the favourable voting ratio from 50 percent on *future* remuneration policy and an annual advisory vote on how the company's remuneration policy was implemented in the previous year. But the CBI has warned against mixing up management and shareholder responsibilities regarding executive reward. Company chiefs claim that these BIS proposals would put UK companies at a competitive disadvantage if they were enacted, unless every other developed economy worldwide did the same thing.

Barclays board suffered a significant revolt by shareholders, after 27 percent of those who voted, said 'No' to the company's executive pay package. When abstentions are added, almost 32 percent of shareholders refused to back the remuneration report. The vote came after Barclays' chairman, Marcus Agius, apologised for the firm's failure to communicate over the issue. His speech at the agm prompted heckles and mocking laughter from shareholders, some of whom were angered by media reports alleging 'excessive' reward packages for the top dogs. It was one of the biggest shareholder rebellions in a major company in recent history. In addition, 21 percent voted against the re-election of remuneration committee chairman Alison Carnwath. "There is a significant minority of shareholders who feel that we got some of these judgements on remuneration wrong for 2011 and that we have not sufficiently taken their views on board," Mr Agius told shareholders. "For this I apologise and I assure

you that in the future we will be engaging differently and more purposefully with shareholders in order to ensure that we obtain a broader level of support on remuneration policy and practice," he said.
Sarah Wilson, a shareholder advisor, said it was a significant protest vote. "The average level of dissent on these issues in big companies is about ten percent. So from that point of view it's a very large protest; there are a lot of worldwide shareholders to try and corral and get their opinions in. So I think in terms of shareholders getting their point across, this is going to go down in the books as one of the most serious rebellions that we've seen for a long time."
Tim Bush, from shareholder advisory group PIRC, told BBC News: "Mr Agius suggested that he could actually justify Bob Diamond's pay as actually being paid to set the bank up for the future. Now I'm not aware of anyone really being paid in advance." Barclays ceo Diamond last year received a £1.35m salary and a £2.7m bonus for 2011, as well as £2.25m in long-term incentive payments.
There were concessions made on the bonuses of the ceo and fd before the shareholder vote, which satisfied some investors. Mr Diamond and finance director Chris Lucas agreed they would receive only half of their bonuses awarded for last year until certain targets for the bank had been met. That change was welcomed by Standard Life Investments, which owns two percent of Barclays: "We are pleased that our key concerns over last year's executive bonuses have been addressed," the fund manager said in a statement.
UK insurer **Aviva**'s ceo Andrew Moss waived his 2012 salary increase, bowing to shareholder concerns over executive pay, three days before he was due to face investors at the group's agm. Aviva launched a review into whether it over-compensates newly-recruited executives for missing out on bonuses due in their previous jobs, it said. Shares in the group lost almost a quarter of their value last year, weighed by its exposure to troubled euro zone economies, worse than the 12 percent decline in the Stoxx 600 European insurance sector index. Moss was to have received a 4.8 percent pay increase this year, boosting his basic salary by £46,000 to just over £1m.
Billionaire founder of **Sports Direct** Mike Ashley – the Centre's '*Employee Share Champion for 2011*' - could be in line for a one-off shares bonus worth around £24m at current prices if new targets are met at the company. The Newcastle United owner's proposed windfall was stretched to reflect another period of strong trading at Sports Direct. He will receive eight million shares – currently worth £23m – if the company reaches its target of increasing earnings by 70 percent over four years to £340m in 2015. SD, which previously offered Mr Ashley six million shares based on a lower threshold for earnings, said the scheme will only pay out in 2018 and was based on "very stretching" targets.
The company runs an employee share scheme that is currently due to give 2,000 staff an average of 5,000 shares – worth nearly £15,000 per head – this summer and a further 12,000 shares the following year. The bonus, which relates to 2010 and 2011, has been one of the factors behind recent strong trading at the retailer, which reported a 13 percent rise in group sales to £267m for the nine weeks to March 25. Sports Direct, which owns Sports World and Lillywhites stores as well as brands including Slazenger and Dunlop, said gross profit increased 13.5 percent to £100m. The firm said in February it would reach its earnings target of £225m for the year to April 29. Sports Direct has launched a second scheme for staff based on targets over four years, with the final trigger being earnings of £300m in the 2015 financial year.
Advertising and marketing group **WPP** handed its founder Sir Martin Sorrell a 30 percent rise in his salary to £1.3m – a move that risks stoking the row over executive pay. The company's annual report showed that the ceo's potential to earn bonuses was being more than doubled, to up to £6.5m. The rise took effect from 1 January 2011 and during that year the 67-year-old netted almost £13m, including £5.5m from a long-term incentive plan. Last year Jeffrey Rosen, the chairman of the WPP remuneration committee, had stunned the City when he told investors he wanted to hand Sorrell a 50 percent pay rise despite enduring a revolt over pay plans when more than 40 percent of shareholders rejected the pay awards to WPP directors. US ceos' total direct compensation, which includes salary, bonuses, stock options, restricted stock and long-term performance plans, increased by 5.6 percent on average in 2011, compared to a rise of 14.5 percent a year earlier, revealed a report by Centre member **Towers Watson**. It found that median annual salaries increased 2.6 percent for ceos in 2011, while annual bonuses paid were flat. That marks a reversal from 2010, when salary increases were flat and annual bonuses increased by 21 percent. TW found that ceo annual bonuses began to shift back toward more typical distributions around target levels, compared with 2010. Far fewer companies paid bonuses greater than 150 percent of target in 2011, while more companies paid bonuses ranging from 100 percent to 125 percent of target.

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