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it's our business

newspad of the Employee Share Ownership Centre

Superwages of capital for maturing five-year SAYE savers

Many thousand employees, who began saving in their company SAYE-Sharesave schemes five years ago, are collecting large windfalls, in some cases quadrupling or more the money they invested. Those now cashing in five-year plans are reaping the rewards of a share option price set when the FTSE100 stood at around 3500 immediately after the great financial crash. Today it is trading at around 6675.

SAYE-Sharesave commits employees to make regular savings for three or five years. When the scheme matures, they then can buy shares in their employer at the originally prevailing fixed option price, which usually offers a 20 percent discount to the then prevailing market value, or to get their savings back if the share price has plunged below the option price. As almost all the FTSE100 share prices have been well above their 2009 levels this year, SAYE maturing five-year scheme participants are coining it on a very significant scale.

Costa Coffee store manager Chris Thompson 45, who saved £250 a month in an SAYE-Sharesave plan at his company, part of the **Whitbread** chain, is among these bonanza winners. Chris said that he could see that his employer "was going places" – so shares in the firm were an attractive place to put aside his monthly savings, but he never imagined the scale of the windfall which would be waiting for him five years down the line. His SAYE-Sharesave savings, which totalled £15,000, were last February turned into nearly £100,000 when the scheme matured, reported *The Telegraph*. Thompson's success, which will enable him to take his family on holiday to Australasia, is no investing anomaly. Thompson, from Chester, opened his first plan five years ago, locking into a share option price of £7.28. He saved the then maximum £250 monthly, which allowed him to buy 2,300 shares when the scheme matured in February. The shares were then trading at £41.13, giving a net windfall of £77,855. "My wife has a brother in New Zealand, so we have dreamt of visiting him. Now we can combine it with the trip to Australia," The father of three, said. "The rest we will put towards savings for our boys." He has spent a career in catering and moved to Whitbread 14 years ago. "I was attracted by the share scheme," he said. "Now when we are busy and rushed off our feet, I don't mind working hard, because I am working for myself. It's a winwin opportunity."

Jennifer Rudman, SAYE schemes manager at **Equiniti**, share registrars, said: "Those who saved into five-year plans have done particularly well. Markets were low when these were launched and some company shares have risen dramatically since then."

Fortune favours the brave and there were many who, at a time when share prices were falling through the floor after the great financial crash of 2008-9, were sceptical about the value of employee share schemes. They have been proved wrong by SAYE-Sharesave five year scheme bonanza pay-outs so far this year.

By contrast, those employees who sank their spare cash into the Share Incentive Plan (SIP) five years ago, on the whole, have not done nearly so well as their SAYE-Sharesave counter-parts. This is because every month, or every six months, depending upon the structure of the particular SIP scheme, participants *buy* their employer's shares at the *then prevailing market price*. So although many 2009 SIP participants did

From the Chairman

Many thousands of esop savers will be cashing in huge bonuses over the coming months, a great result for ShareSave and for the farsighted companies which offered employees five-year contracts, especially when the market looked sick. Employee ownership has clearly been shown to work for those who can afford to save. Our next step must be to take our nostrum to the less well off which is why I am introducing two new Centre awards this year: for the best all employee uses of Shares for Rights and for the best share offers to people on zero hours. This is a challenge to the ingenuity of members. At the same time, don't forget the CSOP: let us find ways of ensuring our ideas permeate the whole of society.

Malcolm Hurlston CBE

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well in the years 2009-2012, when share prices generally were still in recovery mode, they have not produced major gains recently, particularly in the last few months, when stock markets generally have been moving sideways.
News of the huge five year scheme windfalls this year has given SAYE-Sharesave a much needed morale boost.
Staff of **Next,** the fashion chain, who made the maximum contribution over five years, are on target for a nice surprise of around £70,000 when their SAYE scheme matures in December. Last November, **Hargreaves Lansdown** staff picked up more than £100,000 on average. Staff at these companies have to have made the maximum £15,000 contribution over the term and still be employed by the company to reap the full rewards.
BT set a lower maximum for its SAYE scheme of £225 monthly, giving a maximum £13,500 saving. Yet BT staff who saved in full could still pick up more than £80,000 when 24,000 of them could soon be due to share £1bn. Staff in the five-year scheme maturing in August look to have done well because the share price was hovering at around 70p when the option price was set, so staff could lock into an option price of 61p. Recently, the shares were trading at around 370p, so the average windfall could be around £40,000 if that share performance is maintained until August.
The maximum monthly employee contribution to an SAYE scheme doubled from £250 to £500 a month ago, courtesy of Chancellor George Osborne. Companies are already gearing up to launch new schemes to enable staff to double their monthly contributions. Louise Drake, share scheme manager at Centre member **YBS,** which administers plans on behalf of firms, said: "The response to the savings limit announced in the Autumn Statement has been very positive, with several companies offering the increased limits and some deferring invitations to take advantage of the increase until the new tax year."
Sarah Lord, a financial planner at **Killik & Co**, said: "If your employer offers these schemes, it is my view that staff should take up the offer, as these results show there can be a real benefit."
Currently no interest is payable on money invested in SAYE, although a small tax-free bonus has been added as an incentive in the past. When interest rates rise again, the expectation is that this bonus will be reinstated. Gains are liable to capital gains tax (CGT), but only when the shares are sold. Given that the tax-free CGT allowance has just risen to £11,000, most individuals should be able to release gains tax free by phasing encashment. Shares transferred into an Isa within 90 days of acquiring them are free from tax. For 2014/15, up to £11,880 worth of shares, or £15,000 after July, can be transferred in this way. About 1.2m employees are saving in SAYE plans, but the five-year schemes maturing this year look the most profitable.

Cable's final warning on executive reward

Business Secretary Vince Cable warned the paymasters of Britain's biggest companies that they must do more to keep a lid on rising executive pay. In a letter to the chairman of the remuneration committees of the top FTSE 100 companies, he warned that unless more is done to keep pay down, he might have to take "further action".
He said that the government would be watching this year's agm season closely and hoped to see a "new approach" to pay. "Unless business is seen to act responsibly, pressure for further action will inevitably result. I trust that you will seize the opportunity to bring pay in line with performance," he warned in the letter. "Public companies must do more about "excessive and disproportionate pay. Policies that reward executives out of proportion to the value they create are a clear dereliction of the duty.
"Getting pay wrong damages popular trust in business and undermines the duty to promote the long-term success of the company. I therefore think it vitally important that remuneration committees consider how remuneration policies can genuinely support sustainable value creation and avoid creating unwelcome incentives to focus excessively on short-term goals."
He added: "At a time when every part of the economy is striving to get more from less, I hope you find yourselves animated by the same spirit."
Cable told the heads of the remuneration committees that shareholders had shown their willingness to reject excessive pay deals. "I hope you agree that we need remuneration committees that act in a similarly active, challenging way. It is, after all, how managers up and down an organisation are expected to behave: getting the very most out of employees, for the very best value for money, rather than trying to find ways of paying the most possible."
The Business Secretary has been a consistent critic of pay at big companies, and banks in particular. However, his latest intervention marks his strongest signal yet that the government could enact tougher legislation if boards fail to exercise restraint.
"There is now an opportunity for companies to make peace with public," Mr Cable told the BBC. He said it was "particularly true in the banking sector where pay has reached dangerous levels". He added: "We will see how far remuneration committees have listened to pressure from the people who own the banks, the shareholders, and exercise responsibility and long term thinking."
Barclays said it "wholeheartedly agreed" with the arguments made in Mr Cable's letter and pointed out that its chief executive, Antony Jenkins, was not even among the top 100 best paid bosses in the UK. This month, Barclays prepared the way for the replacement of its current remuneration head, Sir John Sutherland, with the appointment of former Bain consultant Crawford Gillies to its board. Barclays faced a barrage of shareholder anger over excessive pay following another troubling year for the bank.

Chairman Sir David Walker and Mr Jenkins were quizzed over large bonuses at the firm's agm in London. Nevertheless, Barclays' shareholders voted to approve the bank's remuneration package, which includes higher bonuses despite a 32 percent fall in profits. Barclays infuriated investors by raising the bonus pool by ten percent to £2.38bn. Around ***34 percent*** of shareholders failed to back the report, including 24 percent who voted against it, whilst another significant group abstained. Standard Life Investments, a key institutional shareholder, voted against the package. The vote came against a backdrop of political and public opposition. Two of the country's biggest shareholder advisory groups – Pensions Investment Research Consultants (PIRC) and the Local Authority Pension Fund Forum – had urged investors to reject the bank's remuneration report.

Jenkins has promised to clean up the bank and bring an end to the culture of excess cultivated by his predecessor Bob Diamond. Barclays' investment bankers received a 13 percent increase to their bonuses – pocketing an average of more than £60,000, although those perceived to be star performers received far more. The bank gave 481 staff pay packages of more than £1m last year – up from 428 in 2012. The lavish awards came despite a spiralling bill for mis-selling interest rate swaps and payment protection insurance, allegations of foreign exchange rigging and a £6bn rights issue to bolster its finances. Shareholders were angered by the fact that the bank paid out 2.5 times more in bonuses than it did in dividends. "There are several concerns with Barclays' remuneration policy," PIRC said. It criticised the way Barclays had 'circumvented the spirit' of new EU rules to cap bonuses. Barclays is introducing so-called 'role-based pay' to ensure senior staff are still paid 'competitively.' "This has the effect of increasing the fixed portion and therefore mitigating the reduction in bonuses envisaged by the EU regulations," said PIRC. It had urged investors to vote against the bank's efforts to increase the limit on bonuses from 100 per cent of salary to 200 per cent of salary and said such levels of pay were 'excessive'.

AstraZeneca suffered one of the biggest shareholder revolts over executive pay this year when ***40 percent*** of those voting at the pharmaceutical group's agm failed to back its remuneration report. The company suffered further reverses at the meeting when 31 percent failed to back its proposed pay policy for the next three years and 43 percent voted against the re-election of Jean-Philippe Courtois, a non-executive director on its audit committee, after he failed to turn up for board and audit committee meetings. The revolt against the remuneration report came after ceo Pascal Soriot's basic pay was increased by three percent to £1.13m for the current year while he could earn a further £4.35m in share and cash bonuses. Soriot's predecessor, David Brennan, was ousted in the shareholder spring of 2012 after a row over his £9m 2011 pay deal and underperformance at Britain's second biggest drug-maker. PIRC, the shareholder advisory body, which said investors should vote against AstraZeneca's remuneration report, appeared to give a warning to other companies considering hefty director pay deals. A spokesman said: "PIRC is concerned about the general level of remuneration and some of the remuneration structures at large companies and we will continue to oppose excessive remuneration policies."

Royal Bank of Scotland (RBS) was forced to abandon attempts to pay bonuses twice the size of salaries after being told the move would not be approved. UKFI, the body that manages the Treasury's 81 percent stake in the bank, told RBS it would veto plans for a 2:1 bonus ratio at the next shareholder meeting. "There will be no rise" while RBS is "still in recovery", the Treasury said. New EU rules mean the bank has to ask its shareholders for approval of annual bonuses above 100 percent of base salaries. RBS said it had wanted to match its competitors by offering bonuses of up to 200 percent of fixed pay, but UKFI (UK Financial Investments) had informed it that it would vote against any attempt to do so. RBS is the only major UK bank that has so far been denied 200 percent bonuses by its shareholders.

The bank announced it would be scrapping bonuses for its chief executive, Ross McEwan, and its chief financial officer, Nathan Bostock, from 2014. Ewen Stevenson, Mr Bostock's incoming replacement as cfo, will not be eligible for a bonus either. The executives will still receive long-term incentive rewards, all in shares, but these will be awarded after five years, and linked to performance. The bank would have needed 66 percent of shareholders to vote in favour of raising the bonus cap above 100 percent. A Treasury spokesman said that while RBS was "heading in the right direction", it had "not yet completed its restructuring", and it would therefore be inappropriate to approve higher bonuses. However, the government will support 200 percent bonuses at Lloyds, in which it now holds a less than 25 percent stake, because that bank had largely completed its restructuring. "We want to retain competitiveness in the banking market, but at the same time we want the industry to show restraint," the spokesman added. RBS's board said: "We acknowledge that this outcome creates a commercial and prudential risk which we must try to mitigate within the framework of a 1:1 fixed to variable compensation ratio". The coded staff, 342 people who take on or manage risk for the bank, will be eligible for bonuses of up to 100 percent of their salary. The bank faced heavy criticism over the size of its bonus pool, after it made a pre-tax loss for 2013 of £8.2bn, the highest since the financial crisis.

All UK listed companies should be able to claw back bonuses paid to poorly performing executive board members, a regulator has proposed, mirroring steps already being taken by banks. The **Financial Reporting Council (FRC)** published how it plans to toughen its corporate governance code, a set of standards which companies must comply with or explain publicly why they do not. Although less strict than the rules for banks, the audit watchdog hopes its standards will encourage executive board members to put a company's well-being before their own. A public consultation on the proposals runs until *June* and the rules are due to come into force in October. "These proposals, which reflect the views of investors and others on earlier consultations, are intended to encourage boards to focus on the longer-term, and increase their accountability to shareholders," said FRC ceo Stephen Haddrill. The watchdog wants to make a company's remuneration committee more responsible for ensuring that executive pay is designed with long-term success in mind, rather than short-term gains that could encourage excessive risk-taking. The proposed code says companies should put in place arrangements so they can recover or withhold bonuses when, with hindsight, performance turns out to be poor. Companies should consider minimum periods before an executive can cash in parts of a bonus.

Lord Wolfson, chief executive of **Next**, waived his £4m bonus for the second consecutive year and awarded it instead to the clothing retailer's staff. Almost 20,000 full-time and part-time employees who worked for the company between April 2011 and April 2014 will share the bonus, which works out as an average of £200 each. In an email to staff, Lord Wolfson said the "exceptional gains" of a 65 percent rise in profits per share and a trebling of the retailer's share price meant his bonus had become "more valuable that I could possibly have hoped for. I am in the very fortunate position to have significantly benefited as a shareholder," the Conservative peer wrote. "In these circumstances, instead of accepting the award, I have asked the board if they will share it amongst all those who have worked for the company during the [past] three-year period." The bonuses, amounting to about 1.5 percent of employees' annual salary, will be paid this month. The £4m bonus was awarded to Lord Wolfson through a share matching plan, which began in 2011. This is the second time Lord Wolfson has shared his bonus with the staff. Last year he waived a £2.4m bonus and shared it among the staff, but still collected a £4.6m pay package.

Morrisons ceo Dalton Philips is to waive his annual bonus after a turbulent 12 months for the supermarket group which culminated in £176m pre-tax loss and a profit warning for the current year. Philips was offered a £374,000 cash and share bonus by Morrisons' remuneration committee but declined, according to internal sources. The sum declined represented a bonus equivalent to 22 percent of his £850,000 basic salary. He could potentially still earn a bonus of 200 percent of salary. It was the second year running that Philips was not receiving a bonus. Although he failed to meet bonus criteria related to profit, he did meet strategic criteria, such as launching an online service through a deal with Ocado and opening more convenience stores. However, the group has endured a string of other challenges, including its treasurer being arrested for insider trading and the personal data of 100,000 employees being leaked on the internet. Earlier, Morrisons sparked talk of an industry price war by saying it would invest £1bn in cutting prices and improving its products over the next three years in a bid to regain ground lost to the discounters. Meanwhile, the *Financial Times* reported that the top team at **Tesco** would not be granted a bonus payout this year after another period of falling sales. The newspaper said that top executives, including ceo Philip Clarke, will miss out on a bonus again this year. Clarke waived his £372,000 bonus in 2012, but was not eligible for an award last year because profit targets were not met. Tesco reported a six percent fall in group trading profit to £3.3bn in the year to February 2014.

SME insurer adopts Eso

A pioneering alternative business structure (abs) has become one of the first legal practices to introduce employee ownership *Legal Futures* magazine revealed. Staff at **Triton Global** – a multi-disciplinary insurance business combining legal advice, claims administration and loss adjusting – were told that they are each to receive a free initial tranche of 145 shares in the company, worth about £500. It follows approval by HMRC of Triton's share incentive and share option plans, making them tax efficient. The company has 120 staff in five offices in the UK and a further 25 in five offices overseas. The employee share trust – which will hold ten percent of Triton's issued share capital, provided by chairman David Simon – will be able to nominate a director to sit on Triton's board. Mr Simon described employee ownership as "an unexpected side wind from the Legal Services Act". He said he was keen for Triton to keep introducing new approaches to legal practice. "I have always been an iconoclast and love upsetting the applecart," he explained. Becoming an abs had *knocked down the silos* between the three previously separate businesses (the law firm is better known as Robin Simon) and encouraged much greater collaboration; introducing employee ownership "is a way of cementing that feeling that we are one business". Mr Simon said it would give retiring shareholders a market in which to sell their shares – overcoming succession issues that plague traditional firms – while research shows that employee ownership makes businesses more productive and improves staff retention. "Margins in insurance are very tight, so we need ways to reward people other than money," he said. "Shares are our new currency." The next phase will be to introduce a share option scheme for middle managers, allowing them to buy shares at a discount after three years of employment. Mr Simon said he hoped being employee owned would help Triton win work by reassuring insurers, who he said are sceptical about the perceived excessive earnings of partners in law firms. The share price was calculated by Triton's auditors, and approved by HMRC. Every year it will have to submit a revised valuation to the taxman.

Sports Direct shareholders again scuppered the firm's plan to pay billionaire founder Mike Ashley a share bonus worth almost £73m. The sportswear group cancelled a vote due to be held at an egm, after realising that it did not have enough support from key investors. The plan would have seen Ashley pick up 8m shares in 2018, an award worth £72.6m at the recent closing price of 907p. This is the second time a large share bonus scheme for Ashley has been rejected, after a £26m plan was sent back by investors in 2012. Sports Direct is understood to have had support for the bonus plan from the company's largest institutional shareholder, Odey Asset Management, but not from other shareholders.
Ashley did not have a vote, as he had a 62 per cent stake in the company. He does not take a salary as executive deputy chairman. Independent retail analyst Nick Bubb said: "Many investors struggle with the idea that Mike Ashley needs any extra incentive, given his huge shareholding in the company, but the Sports Direct non-executives are persevering and are now aiming to get approval at the agm in September for a new and more stretching and more inclusive bonus scheme." Sports Direct said it would now seek approval for a new bonus scheme for all staff, starting in 2015, under which employees would get the option to buy 25m shares, worth £226m, at a fixed price. It did not say whether the shares would cost staff anything at all, or how much of the option scheme would be reserved for Ashley. The 2015 incentive plan would depend on hitting a series of operating profit targets, reaching £750m in 2019. Dave Singleton, Sports Direct's non-executive director and chairman of the remuneration committee, said: "During our ongoing discussions with institutional shareholders, it became apparent that, while we had the support of some of our largest shareholders, we had not been able to secure the requisite level of shareholder approval. While the board is disappointed that this resolution will not now be passed, we respect shareholders' views. We remain convinced of the benefit of aligning Mike Ashley's interests with those of all other shareholders."
Later, almost £500m was wiped off the stock market value of Sports Direct as the City responded to Ashley's decision – following his bonus rebuff - to offload a £200m tranche of his personal shareholding. If the new option scheme reaches all staff and not just the ten percent who are full time, then it will be a major step forward. Recognition of Sports Direct's employee ownership credentials has been affected by its predilection for staff on zero hours contracts.

Royal Mail
Last month more than 143,000 postal employees received the balance of last year's privatisation free share allocations – up to 116 extra shares each.
The Royal Mail post privatisation share price rise was so great that the 'posties' could not receive their *full* free share allocations immediately, otherwise they would have broken the then annual Share Incentive Plan (SIP) investment limit.
As part of the privatisation, ten percent of Royal Mail shares were set aside to be given to employees. Using Whitehall calculations, based on a maximum share price offer of 330p per share, employees were due to receive all these shares immediately. However, such was the surge in the share price once normal market trading began - from 330p to an average 540p per share within days - that the timing of the promised ten percent employee equity share out had to be redrawn. This was because employee participants in the tax approved SIP – which is the umbrella share scheme being used by the postal workers as a home for their free shares – allowed only a maximum investment of £3,000 worth of free employee shares per tax year. At the time, the huge leap in the RM share price put the value of postal workers' free shares around £600 above the annual limit.
The Government appointed Centre member **Equiniti** as registrar and share plan administrator for RMG following a comprehensive tender process.
"With the SIP valuation taking place at the close of play on the first day of trading, the sharp rise in share price resulted in the share award exceeding the £3,000 annual SIP limit. As a result, a full time employee received **613** shares in the last tax year and the remainder in the current tax year to maintain the tax-advantaged benefit," explained RM.
This meant that postal workers had to wait until April this year before they could receive - into their individual SIP accounts - the balance of their free share allocation - the 'missing' 116 shares each (although part timers received a smaller number of shares on a pro rata basis). There was speculation that this hiccough was the reason why Chancellor George Osborne decided finally to raise the annual investment limits for both the SIP and SAYE (Sharesave) from April 6 this year. The SAYE limit was last changed over 20 years ago and this is the first SIP limit increase since the plan was introduced, thanks to Gordon Brown, in 2000.
The RM share price later hovered at the lower level of 505-510p after it said that it planned to cut 1,600 roles as part of a drive to cut costs, mainly among its head office managerial staff, to make cost savings of £50m a year. Unite, the union which represents 7,000 Royal Mail managers, warned that the cuts could spark industrial action.

UK Esop companies outperform the rest (again)
Share prices in UK quoted companies with at least three percent employee ownership easily out-performed their non Eso counterparts in the FTSE All

-Share Index in the first quarter of this year, revealed new statistics published by the **Esop Centre**.
The Esop index (the UK Employee Ownership Index) rose by 11.6 percent during the first three months, while share prices in its comparator, the FTSE All-Share Index *declined* by 0.7 percent over the same period.
News of the super-charged Eso company share performances was given at a London media conference hosted by Centre member **Clifford Chance.**
The Esop index is based on the performance of FTSE quoted companies with more than three percent employee ownership. The new index, which tracks total returns, including dividends, was developed and is maintained by **Capital Strategies,** whose MD is Nigel Mason, a former member of the Centre's steering committee.
Taking January 2003 as the base year where the Esop index stood at 100, it had reached 715 by the end of 2013 and has now risen to 791 (at March 31 2014).
Both indices are calculated by **FTSE International**, a subsidiary of London Stock Exchange.
Esop Centre chairman **Malcolm Hurlston CBE** said: "The substantial outperformance of the Esop index came as a pleasant shock, primed though we are for the employee ownership effect to shine through. The first quarter of 2014 has been a troubled time for investors given Crimea, the Chinese slowdown and shocks to the domestic energy and insurance sectors."
Nigel Mason of Capital Strategies said: "Most investors would accept that high levels of employee engagement are good for performance. By focusing on ownership, we are latching on to a measurable feature which sheds light on something which can be very hard to quantify – a company's culture." Nigel's comments were echoed by David Thornton of **Red Hot Penny Shares,** who recently highlighted the Esop Index in an article for *MoneyWeek* (http://bit.ly/1foY8Gy). David pinpointed the challenges to be overcome in turning the Index into an investible proposition, but argued that culture was a core consideration for investors with more than a short-term interest in a company. It made "complete sense" to develop a measurable proxy for this intangible factor.
Roland Bonney, a founder and ceo of **Benchmark Holdings**, outlined the role of employee share ownership in the company's impressive growth. Benchmark Holdings floated on the London Stock Exchange's AIM market in December 2013 and employees were able to participate in the success through a heavily subscribed share scheme. Company culture is essential to the business's strategy, explained Roland, and employee share ownership is a way of both recognising and reinforcing that culture.
LSE ceo Xavier Rolet said the new Index "highlighted some of the key benefits of encouraging employees to take an active interest in the future success of the companies in which they work."
Capital Strategies is developing an open ended investment company which should be launched later this year.

TSB flotation nears
The £1.5bn flotation of TSB finally looked imminent as owner Lloyds Banking Group was completing its line-up of banking advisers for the stock exchange listing. Lloyds, which is now only 25 percent owned by taxpayers, following the recent £4.2bn share sale by the Treasury, remains under orders from the European Commission to sell TSB, because Lloyds took £20bn of state aid to bail it out in 2008. What is keenly awaited is news of whether part of the share sale IPO will be reserved for employees, who work in the 630 TSB branches.

Newspad needs your employee share scheme news stories. Please tell us when a client has a 'in the money' share scheme maturity, or when a company is launching a slightly different kind of employee equity initiative. You can tell us too about share scheme technical issues which you think should be brought to wider attention. Please e-mail your news to editor, Fred Hackworth at: fhackworth@hurlstons.com

Say On Pay – the full EU Monty
Corporate shareholders across the European Union would gain the power to reject the pay deals of their executive employees under new proposals announced by the European Commission on April 9 (2014) The so-called 'say on pay' measures would require companies to set out a maximum level for executive pay in a remuneration policy document and put the policy before a binding shareholder vote.
Remuneration policies would have to explain the ratio between average employee pay and executive pay, and outline how pay measures would benefit the long-term interests and sustainability of the company. But the Commission proposals would not impose a binding cap on executive pay, as has happened with banker's bonuses in the EU, a move which is being challenged by the UK government.
The Revision of the Shareholder Rights Recommendation is the Commission's latest step to modernise company law and enhance the corporate governance of the 10,000 companies listed on stock exchanges across the European Union, following the establishment of its 2012 Action Plan. Other proposals include increased transparency requirements for institutional investors and asset managers on their investment and engagement policies towards companies they invest in.
Proxy advisers would face greater scrutiny under the measures. Proxy advisers – which the Commission defines as firms providing services to shareholders, notably voting advice - would be required to offer greater transparency as to the methodologies they use to prepare their voting recommendations and on how they manage conflicts of interest.
Internal Market and Services Commissioner Michel Barnier said: "The last years have shown time and

time again how short-termism damages European companies and the economy. Sound corporate governance can help to change that. Today's proposals will encourage shareholders to engage more with the companies they invest in, and to take a longer-term perspective of their investment. To do that, they need to have the rights to exercise proper control over management, including with a binding *say on pay*."

Christopher Mordue of Centre member **Pinsent Masons**, said: "This latest initiative is a clear signal that European lawmakers have unfinished business in the areas of executive pay and corporate governance – issues which also remain under considerable public scrutiny. The problem for business is that regulatory intervention in this area is emerging in a very piecemeal basis at both national and European level. The EU bonus cap for banks has only just come into force and this is also the first year of new rules in the UK which require greater transparency on executive pay for listed companies and binding shareholder votes on remuneration policies. Now coming hot on the heels of those reforms are EU moves to introduce greater restrictions on directors pay, greater powers for shareholders to vote down pay awards and possibly involvement for employees or unions on remuneration committees, all of which could cut across existing national laws and initiatives.

"***This mushrooming regulatory burden is creating ever greater complexity and uncertainty, with the risk of legislative overkill,*" *said Mordue.* ***"It would be better to wait and see how effective existing national initiatives on executive pay, transparency and shareholder rights are, before adding yet another layer of regulation on business.*"**

The Commission said that the first European *Say on Pay* was designed to increase transparency on pay policies of listed companies and enhance shareholder engagement to benefit the long-term welfare of companies. "Today, there is an insufficient link between management pay and performance and this encourages harmful short-term tendencies," said a Commission statement. "The proposals would oblige companies to disclose clear, comparable and comprehensive information on their remuneration policies and how they were put into practice."

The Commission announced proposals to "improve the overall quality of corporate governance statements published by companies". This would require companies that depart from the applicable corporate governance code to provide appropriate explanations for the departure.

The Commission announced proposals too for a Directive on single-member private limited liability companies designed to make it easier for small and medium-sized enterprises (SMEs) to establish subsidiaries and operate in other EU states. Currently only two percent of SMEs establish subsidiaries abroad, according to the Commission. Announcing the SME Directive proposal, Barnier said: "I see it as a priority that company law offers European SMEs an efficient framework for their operations and growth. The European Single-Member Company will help entrepreneurs reduce costs and organise their activities abroad."

FATCA compliance looms

The Centre is grateful to US lawyers *Morgan Lewis & Bockius LLP* for this commentary on the looming deadlines for implementing the US Foreign Account Tax Compliance Act (FATCA). The July 1 start date for FATCA withholding on certain payments of US source income is fast approaching, and no extensions of that start date are on the horizon. Foreign financial institutions (FFIs), such as non-US investment funds, should consider the FATCA compliance steps and take immediate action to prepare for FATCA.

Register with the Internal Revenue Service and get a Global Intermediary Identification Number.

The Internal Revenue Service (IRS) extended the deadline for registration of FFIs from April 25 to May 5. FFIs which registered with the IRS by **May 5** will be included in the first list of FFIs that are not subject to FATCA withholding, which the IRS will publish on **June 2.** Upon registration, an FFI will receive a Global Intermediary Identification Number (GIIN) that the FFI will provide to withholding agents to identify themselves as registered FFIs and to prevent FATCA withholding. There may be considerable confusion regarding U.S. withholding on payments made on and after July 1. For example, withholding agents may withhold on payments to non-registered FFIs, even with respect to FFIs that are subject to extended registration timelines (e.g., in the case of an FFI located in a 'Model 1 IGA' jurisdiction). Withholding agents making payments subject to FATCA withholding will want to see FFIs on the First List because these agents will be cross-checking GIINs provided on a Form W-8BEN-E with GIINs associated with FFIs included on the First List. As a result, FFIs—even in jurisdictions with Intergovernmental Agreements (IGAs) —should register on the IRS FATCA website by May 5 and obtain a GIIN in order to be included on the First List and to reduce the risk of inadvertent withholding on or after July 1. The registration process requires an FFI to answer several questions, including designating what type of financial institution the FFI is (e.g. single, part of a group/sponsor, and whether the FFI is located in a "Model 1 IGA" or other jurisdiction) and identifying a "responsible officer" who will serve as point of contact.

Review Forms W-8BEN-E and W-8IMY.

Although the "pre-FATCA" Forms W-8 may, in some cases, be used by non-US persons for payments made prior to January 1 2017, reviewing the newly issued Form W-8BEN-E (or, if applicable, IRS Form W-8IMY or any other form in the W-8 family of forms) and calling tax advisers to discuss how to complete that form is recommended. The new Form W-8BEN-E allows an FFI to provide its GIIN to a withholding agent and to clearly indicate its status under FATCA (e.g. deemed compliant, participating, or exempt). Although instructions have yet to be issued for Form W-8BEN-E, **withholding agents will request new Forms W-8 as soon as July 1 (and possibly before then), and FFIs should be prepared to deliver such forms.** If the updated forms are provided and a GIIN is applicable, FFIs may reduce the risk of inadvertent FATCA withholding.

On the Move

Leslie Moss is ceo of **The HR Partners** (www.thehrpartners.com), an umbrella organisation for a group of senior reward specialists consulting to major organisations in the UK and beyond. Until last September he was Practice Leader for Aon's UK Human Capital business and he retains a connection with the firm. Pay data is provided courtesy of New Bridge Street, an Aon company. His current consulting focuses on reward strategy, incentive plan design, corporate restructuring and share plans. For further information, please contact Leslie at leslie.moss@thehrpartners.com or by telephone on +44 7908 223481.

Kevin Thompson, long time shares schemes partner at Centre member **Clifford Chance**, has retired. Being both a qualified barrister and solicitor, hailing originally from Newcastle-upon-Tyne, Kevin graduated from St Johns College, Cambridge, and joined Clifford Chance in 1988. He has been a partner at CC since 1999. Sally Robinson of Clifford Chance has been invited to take Kevin's place on the Centre steering committee. Kevin was the latest in a line of CC partners stretching back to David Reid, a founder of the Centre. Kevin was the Centre's genial host for the announcement of the Esop Index 2014/1 last month.

George Tuthill has left Computershare, Ireland, after many years' service, but he will remain involved with Irish ProShare and IAFP. His contact details are: georgetuthill@eircom.net

The Government: The promotion of ex City man, **Sajid Javid MP**, to the Cabinet post of new Culture Secretary, following the resignation of Maria Miller MP, left a hole in the Treasury team, as Sajid had been Financial Secretary to the Treasury. **Nicky Morgan MP,** former corporate lawyer, was promoted within the Treasury team, from Economic Secretary to Financial Secretary, to replace him. Nicky has a second ministerial responsibility – for Women. **Andrea Leadsom MP,** ex City banker (BZW Barclays) and fund manager, replaced Nicky Morgan as Economic Secretary to the Treasury.

A black tie dinner at Australia House marked the retirement of **Michael Whalley** after 35 years in charge of the London office of Minter Ellison. The event coincided with the 40th anniversary of the establishment of the firm in the UK capital and was hosted by the High Commissioner, former premier of South Australia, the Hon. Mike Rann. Australia House was built from materials imported from *Down Under* and constructed a century ago during the course of World War One. The coincidence of Michael's leaving and the firm's anniversary brought many of the firm's leading partners to London to mark the occasion. They paid tribute to Michael's leadership, establishing the office as a front door to Europe, while gaining understanding of Australia's growing role - with the firm as trailblazers - as a gateway to the rising economies of Asia, China in particular. Michael's speech, typically warm and straightforward, lasted the 15 minutes he had prescribed. The next weekend he faced the higher hurdle of speaking at his daughter's wedding. The Centre thanks Michael for his participation as a member and speaker at European and world events. His successor contact is **Aidan Douglas**. The convivial Esop table at the dinner included Nicholas Greenacre and Euan Fergusson from **White and Case**, Lindsey Dowd from **RBC** and Janet Cooper and Bob Grayson from **Tapestry.**

Finance Bill 2014 confirms two new tax reliefs

The two new reliefs are designed to encourage and support the creation and growth of employee-owned companies**,** come into being this year.

*Under the **first** new tax relief, the sale of a controlling interest in a business to an indirect employee ownership structure, to be known as an 'employee ownership trust,' will be entirely free from capital gains tax (CGT). An employee ownership trust (EOT) must meet certain conditions:

- The company whose shares are transferred must be a trading company or, where there is a group, the principal company of a trading group.
- The EOT must meet the 'all-employee benefit requirement.'
- The EOT must not hold a controlling interest in the company before the disposal, but must do so at the end of the tax year in which the disposal takes place.
- Where the transferor has an interest of more than five percent in the company in the 12 months before the disposal, the ratio of employees who are participators to employees generally must not exceed 2/5.

The all-employee benefit requirement means that if the EOT provides benefits (such as cash or shares) to individual employees, it must generally do so in favour of all eligible employees on the same terms. The EOT cannot skew benefits to the advantage of particular employees, although it can allocate benefits of differing amounts by reference to factors such as salary, length of service or hours worked. The Government accepted during consultation that it could be difficult for existing EBTs to satisfy the all-employee benefit requirement without significant changes to their foundation documents. Accordingly, it introduced provisions to the Finance Bill whereby an existing EBT can be deemed to meet the all-employee benefit requirement, if the way in which it operates is consistent with the all-employee benefit requirement; it had at least a ten percent shareholding in the underlying company at December 10 2013 and subsequently obtains control of it. The new relief is available for disposals on or after April 6 2014.

*Under the **second** tax relief, bonuses of up to £3600 per tax year paid to employees of companies controlled by an EOT benefit from an income tax (but not NICs) exemption. The key requirements for the new relief are:

- The employer company must be a trading company or a member of a trading group.
- A controlling interest in the company or, in a group situation, the holding company of the group, must be held by an EOT.
- Provisions very similar to the equality requirement for the CGT exemption also apply to the income tax exemption.
- The company should not have a ratio of more than 2/5 for office holders and directors to employees.
- The payment must not be normal salary, must not be made by a service company and must be made under an arrangement under which:
  *all employees of the company, or, where there is a group, any group company must be eligible to participate in any award (although employees with continuous service of less than 12 months can be excluded); and
  *all employees participating in the arrangement must do so on equal terms (although awards can be determined by reference to pay, length of service or hours worked).
  The new relief will apply to payments on or after October 1 2014.

CONFERENCES

ROME June 5 & 6

Now is your last realistic chance of both registering for the Centre's 26th annual employee equity plans conference in Rome on **Thursday June 5 and Friday June 6** and obtaining cheap return airline tickets too. Almost **40** people, from six countries, have already registered for this event and the Centre now holds only two vacant rooms in our conference hotel, the **Residenza di Ripetta**. This week members of STEP Italy are being invited to join the event and late registrants will be accommodated elsewhere.

Two more new topic presentations - from Centre member firms **Ernst & Young** and **White & Case** – have almost completed the programme. **Ceri Ross** from Ernst & Young LLP will present the results of EY's oven-fresh 2014 global share plan survey, which includes a report from the German Share Plan Institute, while **Nicholas Greenacre** from White & Case LLP will ask what can be done to restore plan promoters' confidence as the regulatory tide engulfs employee equity plans in Europe? Other speakers represent: **Equiniti; Association of British Insurers; Catholic University of Milan** (employment law professor)**; David Craddock Consultancy Services; Esop Centre; European Trade Union Confederation; The HR Partners; KPMG; Lewis Silkin LLP; Pearson Group; Pett, Franklin & Co, Strategic Remuneration** and **SunPower Corporation (US).** Check on the Centre website at: www.esopcentre.com/event/diary-date-rome-2014/ for updates to our Rome programme, including the speaker list.

The Centre thanks lead Rome sponsor, **Equiniti**, which is helping to organise this event. *Equiniti provides award-winning executive, Sharesave & SIP plans and a wide variety of other employee benefits management services. It is the leading share plans administration provider for UK-listed companies and manages the second largest UK Flexible Benefits plan. Equiniti's clients vary in size, from 30 to more than 300,000 employees and span both FTSE 350 and overseas listed companies. Contact: John Daughtrey, head of employee benefits business development:*
email: john.daughtrey@equiniti.com
website: www.equiniti.com

The conference e-brochure is co-sponsored by two Centre trustee members: **Appleby Global** and **Bedell Group**, both based in the Channel Islands.

The Centre offers a conference package, comprising:

- Entrance to all conference sessions
- Delegate pack with speech summaries
- Two nights' accommodation (on single occupancy basis) on **June 4 & 5** in the four-star **Residenza di Ripetta**, Via Ripetta.
- Breakfasts, lunches and refreshments during coffee breaks
- Invitation to cocktail party (partners welcome)

The hotel, a historic converted 17th century convent, is part of the Royal Demeure Luxury Hotel Group and is located a stone's throw from Spanish Steps, the River Tiber and Rome's smartest shopping street, Via Corso. Hotel details are at: http://tinyurl.com/nc9ksdv. Registration secures you a room in the conference hotel, as the Centre books rooms at group rate, to make things easy for all. The delegate package prices for this conference are:

Centre member:
Practitioners £1,135 Plan issuers £645
Non-member:
Practitioners £1,750 Plan issuers £725
No VAT is charged on these fees

Practitioner **speakers**, who are Centre members, will pay **£995**; plan issuer member **speakers** will pay **£645**. **Only two speaking slots remain. Apply now.**

If you wish to attend as a delegate, register asap

Small supplements are charged for two person room occupation, so bring your partner or VFR with you. Idem those who want to upgrade their rooms.

Room extensions over the weekend will be available at the same price (subject to supply and demand) as the Centre pays for your package.

This two-day event provides an ideal forum for updates on the latest legal, regulatory and market trends in the employee equity industry; doing business; discussing share plan strategies and networking. For further info, visit our website at www.esopcentre.com/event/diary-date-rome-2014/. Your Rome contact is Fred Hackworth: email fhackworth@hurlstons.com with a copy to esop@esopcentre.com

Co-operative Bank refuses executive pay out

The **Co-operative Bank,** which finally announced a £1.3bn loss last year, said it would not pay out £5m to former executives who left the bank after its near collapse last year.

However, Co-op Bank chief executive Niall Booker will receive a £2.9m pay package, which includes a basic salary of £1.2m and up to £1.7m in performance related bonuses. In addition, he could receive a potential £1.2m as part of a three year incentive plan based on the future performance of the business. The bank said it did not expect to make a profit in 2014 or 2015.

The losses come after the bank's failed bid to buy 632 branches from Lloyds Bank last year. The deal collapsed after the discovery of a £1.5bn black hole in the Co-op Bank's balance sheet.

Parent company the **Co-operative Group**, which later declared an overall loss of £2.5bn, lost control of the bank to US hedge funds that led a bank rescue in December. Today, the Co-operative Group has food, pharmacy, funeral, electrical, travel and legal businesses. It is the largest mutual business in the UK, owned by its customers and members who number almost eight million. The group, which has lurched from crisis to crisis and lost a string of bosses along the way, admitted that the huge losses were due to "fundamental failings in management and governance at the group over many years". The rot started with the destruction of the powerful central secretariat after Sir Graham Melmoth retired.

Richard Pennycook, the Co-op's stand-in boss following the resignation of Euan Sutherland after less than a year in charge, said the catastrophic mismanagement of the Co-op Bank was just one of a series of blunders by senior management. "The headline is a comprehensive loss – the worst in the history of the Co-op after 150 years," he said. "We're not trying to sugar-coat that in any way. This disastrous result reflects the crisis that emerged at the bank in 2013." Pennycook, a turnaround specialist who joined Co-op as finance director last year before being elevated after Sutherland's shock exit, said the scale of the disaster had shocked the Co-op's 90,000 staff and members too.

The Co-op's ten-strong executive team together collected retention bonuses – which enraged staff and members because the bonuses were not performance-related – of more than £4m last year. A spokeswoman pointed out that, from next year, payouts will be subject to performance targets. However she refused to provide any details of the metrics of the targets.

Pennycook said the organisation must fundamentally change its management structure to ensure its survival. "We have found a period of poor management," he said. "It was not just an accident at the bank." He implied senior managers had, in the past, been able to run roughshod over the board. "I don't think there's been enough transparency: when I've taken discussions over the financial health of the organisation to the board, in some cases it's been a revelation [to them]," he said. "The credibility, trustworthiness and financial strength of the group, built up over nearly 150 years, have been stripped away over the past five years. And yet if ever there was a time for the revival of a campaigning organisation owned by its members, all of whose profits can be put to work in the communities where they live, it is now."

Lord Myners, the former City minister who was drafted in to review the group's governance, quit after he said it had become clear that the Co-op's complex regional board structure would not accept his reforms. Myners accused former Co-op management of making "catastrophically inept decisions over and over again. The reason the Co-op is in such a mess is because former managers were allowed to run amok like kids in a sweetshop," he said in the *Daily Mirror* as the row over the group became increasingly bitter.

The group is owned by its members which include 80 or so member societies. Area committees are the grass roots of the organisation. There are about 48 of them, each with 10 to 12 members who serve three-year, elected terms. These area committee members elect members of the seven regional boards. They, in turn, elect 15 of the 21 members of the group's board. Of the remaining six, five come from member societies, such as Midcounties and Midlands, and there's an independent director, the role held by Lord Myners, until he quit. Myners wanted to replace the Co-op's complex board structure with that of a more traditional listed company. That proposal has been opposed by the Co-op's regional boards, which will lose a lot of power if his reforms – which remain on the table despite his departure – are made. Members will be asked to vote on reform at the Co-op Group's agm on May 17, when Myners's proposals will be published. But a specific vote on implementing his suggestions will not be made until the organisation has comprehensively consulted with members

The Co-op Bank apologised to its 4.7m customers. Mr Booker said: "We appreciate that customers and other stakeholders continue to feel angry about how past failings placed the future of the business so seriously at risk." It said up to 40 of its high street branches will close this year, which is likely have an impact on jobs. The bank has not yet clawed back millions of pounds paid out as bonuses to senior executives Neville Richardson and Barry Tootell, who were in charge of the company as it revealed a £1.5bn hole in its accounts, the *Sunday Times* reported. In response to the losses, the bank had said it would claw back bonuses paid to former ceo Richardson and former chief financial officer Tootell. However, it is believed that no such claw back has yet been made. The bank announced that it planned to award significant pay rises to senior staff over the next two years, despite the losses announced within its banking arm. Co-op Bank has admitted it requires a further £400m in new capital to settle claims of past mis-selling of payment protection insurance and interest rate swaps. The bank owes £263m from a previous capital injection and the group plans to obtain the funds through the sale of its farms and pharmacy chain. Previous ceo Euan Sutherland, who joined the company in May 2013 but who was to describe it as “unmanageable” after a generous pay deal was leaked, announced his resignation in March.

Annual share plan returns – 2013/14

Important UK filing and registration deadlines and changes to filing requirements are summarised by Centre member **Bird & Bird**. This alert concerns only companies with UK resident employees or directors who have been granted options or share awards. The UK annual share plan returns for the 2013/2014 tax year must be filed with HM Revenue & Customs (HMRC) **before** July 6 2014 (for EMI and non-qualifying plans) or July 7 2014 (for SIP, SAYE and CSOP plans). Significant penalties can apply if the returns are not filed in time.

Non-qualifying plans

HMRC requires that companies report the grant and exercise of non-qualifying securities options and the acquisition and disposal of other employment related securities and other reportable events on Form 42. Form 42 for the 2013/2014 tax year can be downloaded from :

www.hmrc.gov.uk/shareschemes/form42-14.pdf

Guidance on completing Form 42 can also be downloaded from :

www.hmrc.gov.uk/shareschemes/form42-guidance-2007.pdf

Qualifying plans

Each qualifying plan has a specific return form.

Company Share Option Plans (Form 35)

www.hmrc.gov.uk/shareschemes/form35-14.pdf

Save as You Earn Plans (Form 34)

www.hmrc.gov.uk/shareschemes/form34-14.pdf

Share Incentive Plan (Form 39)

www.hmrc.gov.uk/shareschemes/form39-14.pdf

Enterprise Management Incentive Options (Form 40)

www.hmrc.gov.uk/shareschemes/emi40-14.pdf

There is no requirement to report the grant of EMI options on Form 40 but even if only grants have taken place the forms needs to be returned showing no activity for the year. Please note the changes to EMI1 notice of grant filing procedure, outlined below, from April 6 2014.

Collect information now

It is important that companies 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.

Registration requirements for qualifying and non-qualifying plans

The new HMRC Employment Related Securities online service for registration and self-certification of employee share schemes and arrangements goes live from April 6 2014.

All employment related securities plans (both tax advantaged and non-tax advantaged) must be registered by July 6 2015 at the latest. Failure to meet this deadline means you risk either losing tax advantages (including for current plans) or being unable to file your end of year return on time and then incurring penalties. HMRC has suggested a timetable for registration (shown below), but you can choose to register at any time.

Period	**Companies with names beginning with letters**
April to May	A to E
June to July	F to L
August to September	M to S
September to October	T to Z

Changes to EMI notice of grant

From April 6 2014 HMRC no longer accepts paper copies of the EMI1 notice of grant form. These forms must still be completed but should be retained by the employer. Companies granting EMI options will need to register the plan and file a notification online within 92 days of grant. This will be done via HMRC’s Employment Related Securities online service, which is accessible through the PAYE Online for Employers service. If you are not already registered for HMRC’s online services, you will need to do so to comply with this requirement. HMRC will not accept online notifications unless the plan has been registered.

Changes to filing of annual share plan returns from 2014/15

Bird & Bird’s Employee Incentives and Benefits team will send an alert dealing with these specific changes closer to the time, but companies should note that 2013/14 will be the last year in which HMRC will accept paper annual share plan returns for qualifying and non-qualifying plans. From tax year 2014/15 onwards (i.e. for the filing deadline in July 2015) these returns will need to be filed online.

Partly-paid shares ruling

Before the financial crisis it was relatively common for UK private companies to use partly paid shares to incentivise key members of staff. Under these arrangements shares were issued to recipients for market value by the company but the subscription price was left outstanding on the terms that it could be called up by certain trigger events. The shares are treated as fully paid up for company law purposes. This analysis flows through into the tax with the consequence that there should be no market value tax charge on the share issue because the shares are treated as paid up for income tax purposes. The use of partly paid share schemes has been less common since the financial crisis because of a greater awareness that share prices can go down as well as up with the consequential risk that an award holder could be left with an asset which is worth less than he owes to the company. Where a close company (broadly a company under the control of five or fewer shareholders) makes a 'loan to a participator' then the company incurs a tax charge equal to 25 percent of the face value of the loan. In the ***RKW Ltd*** case, the tax tribunal had to consider whether the outstanding subscription price was a loan which would have triggered a 25 percent loan charge. It took the view that the legal definition of a loan is a flexible one and it can have different meanings in different contexts. This led the tribunal to conclude that the outstanding subscription price was not a loan when set against these facts. The judgment therefore avoids a disastrous outcome for partly paid share schemes by confirming that the outstanding subscription price does not crystalise a 25 percent loan to participators charge, reported lawyers *Squire Sanders.*

Deutsche Bank and UBS win in Court of Appeal on share schemes

The Court of Appeal has given its decision on the appeals in *Deutsche Bank*, and *UBS AG*, which concern the tax and NICs implications of arrangements to pay bonuses to employees. The Court of Appeal has unanimously decided both cases in favour of the taxpayers. Thus it reversed the decision of the Upper Tribunal in favour of HMRC in *Deutsche Bank* and upheld the decision of the Upper Tribunal in favour of the taxpayer in *UBS AG*. The Court of Appeal trenchantly rejected HMRC's arguments that the bonus awards represented an entitlement of the employees to be paid money earnings immediately prior to the subscription for shares in a special purpose vehicle, that on Ramsay grounds this was to be treated as a "cash in/ cash out" scheme, and that the banks should be treated as having control over the independent third parties contracted to administer the awards by the special purpose vehicle (thereby invalidating the exemption from the restricted securities tax charge when the restrictions lapsed). In relation to the *Deutsche Bank* appeal, Lord Justice Rimer observed that the First-tier Tribunal had carefully examined the facts as regards the independence of the trustee of the fund vehicle and had concluded that, whilst there was close co-ordination, the evidence did not show "the necessary degree of compulsion" to establish the required control at shareholder level. That was a question of fact and the First-tier Tribunal had given rational reasons for this finding. The Upper Tribunal's conclusion that the only answer to the control question was that Deutsche Bank was in control of the trustee was 'obviously wrong.' Thus distributions made to employees from the investment vehicle were held not chargeable to PAYE and National Income Contributions

Living Wage plea

Addressing an audience of business leaders and politicians as part of **KPMG**'s support of *Fair Pay Fortnight*, David Gardner, director of public policy at KPMG, highlighted the importance of organisations acting responsibly and paying employees and contracted staff a *Living Wage*. He said: "Fair pay isn't just fair play. Offering staff and suppliers a living wage can improve engagement and help people earn enough to afford the basics. From a business perspective, evidence suggests it's good for productivity. At KPMG we have seen that becoming a *Living Wage* employer has helped improve retention and reduced recruitment, training and sickness costs amongst staff and contractors employed by our suppliers." Discussing the impact of low pay, Gardner noted that *5.2m people - 20 percent of the UK's working population - are now paid less than the living wage.* According to a KPMG study, half of those earning below this level expect their finances to worsen over the next six months. He added: "The principle of fair pay cannot be ignored. Yet figures suggest that there are still too many people across the UK earning too little, so this is the perfect opportunity for employers to consider whether they can join the growing list of businesses paying a Living Wage. It may not be possible or practical for everyone, but all organisations need to do what they can to address the problem of low pay."

Employees finally look set to see the benefit of the fledgling economic recovery in their pay cheques, according to the latest pay data from *EEF*, the manufacturers' organisation. The survey shows that the three-month average pay settlement by manufacturers has remained at a healthy 2.6 percent after hitting this level in January. Importantly, this includes one of the year's major pay rounds, so will be seen as setting the scene for pay this year. This compares to last year's average pay settlements of 2.4 percent, with those agreed in the summer months scraping in at just 2.2 percent. However, it suggests that manufacturers have reached affordable agreements with staff, allaying fears about wage inflation. The proportion of pay freezes has stabilised at five percent, the lowest level since August 2008, while the proportion of smaller settlements has continued to fall with 26 percent coming in at less than two percent. Pay deferrals have remained stable at four percent.

Executive reward restrained

PwC analysis shows 2014 is set to be another year of executive pay restraint as early reporting shows FTSE100 executives have seen their bonuses fall for the third consecutive year and nearly a quarter have had their base pay frozen. PwC's analysis of FTSE100 companies with year ends from September 30 2013 onwards revealed that ceos' median bonus payouts for 2013 were £1.14m, with ceos on average receiving bonuses one percent lower than 2012.This signals the third consecutive year of bonus reductions and tougher performance assessments, in spite of economic recovery and a ten percent increase in the FTSE100 index during 2013. The picture on salary is similar, with nearly a quarter of executives receiving no salary increase in 2013. Where increases were given, these were largely in line with inflation and increases for the general workforce at less than three percent. The median salary for ceos in the companies that reported is £898,000. Median total pay, including long-term incentive pay-outs, increased by just 0.5 percent for ceos in post in both years. PwC's supplementary survey of large UK companies suggests that the trend for moderate pay increases and bonus pay-outs will continue in the medium-term, as 60 percent of organisations expect the overall level of senior executive pay to be within ten percent of current levels over the next five years. This is being driven by market trends and the pressure to link pay more closely to performance. The new disclosure rules are having an impact on remuneration committee decision-making. One third of companies believe their remuneration committee is more focused on the fairness between executives and the wider workforce when making pay decisions as a result of the rules.

Tom Gosling, head of PwC's reward practice, said: "The 2014 AGM season is shaping up to be another year of restraint. Despite fears that executive pay inflation would take off again as the economy recovers, this doesn't seem to be the case. Executives are seeing only modest salary increases and bonuses continue to fall. Remuneration committees are approaching any increase in pay-outs with caution to ensure they accurately reflect performance and satisfy shareholders. Even when long-term incentives are included, total pay has only risen by 0.5 percent year on year, despite the recovering stock market which tends to increase the value of share awards. Remuneration committees are clearly listening to shareholders, are exercising restraint in their decision -making and working hard to ensure pay only increases when performance improves. The extent of executive director salary freezes since the financial crisis is one of the untold stories of executive pay restraint. It is now common practice that executive pay rises are in line with the rest of the workforce. The desire to demonstrate fairness within the workforce on pay decisions is now much higher up remuneration committees' agendas.

"It seems less and less likely that executive pay inflation will return to the levels seen before the financial crisis. Most organisations expect pay to plateau over the next five years as shareholder pressure and a focus on pay for performance remains high priority. There's a good case to be made that executive pay will stagnate or even reduce in real terms over the next decade."

PwC's research showed that companies are tweaking reward packages, rather than undertaking wholesale redesign. Increases in shareholding requirements or holding periods are the most common changes, alongside changes to long-term incentive plans. Five times as many companies are reducing their overall pay opportunity as are increasing it. Investors' push for post-vesting holding periods is gaining traction, with the number of companies applying them expected to more than double this year and half of companies expected to comply by 2015.

The research shows that most companies believe the new Department for Business, Innovation and Skills (BIS) pay disclosure rules are a good thing and will help improve trust and transparency in executive pay. But this increased engagement between companies and investors has not translated to an improved quality of engagement with shareholders for most. Sixty percent of companies believe the rules will make it harder to recruit executives from overseas.

Mr Gosling added: "The new pay disclosures are a double-edged sword for companies. While they have helped rebuild trust in executive pay and increased fairness with the wider workforce, there are concerns that the prescriptive nature of the rules will make it harder for companies to recruit directors from overseas and have not led to improved quality of engagement with shareholders."

PwC's analysis was based on 43 FTSE100 companies that have year ends from September 30 2013 onwards, with the majority having a December 31 year end, and where an individual has been in the role for two years or more. This is supplemented by a survey of heads of reward, executive board members, remuneration committee chairmen and HR directors at 34 large companies carried out in February 2014.

EU Commission wades in on executive pay

Firms will have to put their remuneration policy to a binding shareholder vote if a **European Commission** proposal gets approval. The proposal is part of a mooted commission package to boost shareholder power and control executive pay. But there would be no EU-wide pay cap and the so-called "say on pay" policy would only apply to publicly traded firms in the 28-nation bloc. The move is the latest by European lawmakers to control executive awards. Since the global financial crisis began in 2007-08, the EU has agreed to ban banker bonuses of more than twice the level of fixed pay. It has introduced pay rules for managers of hedge funds and other EU investment vehicles.

"Today, there is an insufficient link between management pay and performance and this

encourages harmful short-term tendencies," said the Commission, announcing the new initiative. The reforms proposal comes weeks after hefty bonuses and remuneration packages were announced at Barclays, Royal Bank of Scotland and Lloyds Banking Group.
The Commission proposals would oblige companies to disclose "clear, comparable and comprehensive information on their remuneration policies and how they were put into practice". The pay policy would need to indicate clearly what the set maximum level for executive pay was at each individual firm. It would need to explain how it contributed to the long-term interests and sustainability of the company. In addition, it would need to explain how the pay and employment conditions of employees of the company were taken into account when setting the executive pay policy - including indicating what the ratio was between average employees' and top executives' rewards. It is hoped the proposed initiatives will boost shareholder oversight and awareness.

Reward climbs fast in China

The pay of ceos in China has been rising rapidly over the last decade. What's more, it is increasingly linked to corporate performance in much the same way as it is in the West, even though the country remains a communist regime with state control of the largest firms. These are among the findings of new research by Alex Bryson (NIESR), John Forth (NIESR) and Minghai Zhou (University of Nottingham Ningbo China), which analyses accounting data on all the public companies listed on China's two stock exchanges for the period from 2001 to 2010. Their study, published in the Economic Journal, finds that:
*Top executive compensation is highly sensitive to firm performance and it became more sensitive between 2001 and 2010, thus ensuring that ceos' fortunes are tied to shareholder interests. The strength of the pay-performance link is similar to that in Europe, but much less sensitive than in the US.
*Average total cash and bonus compensation for a top executive in 2010 was equivalent to US$130,000. Although this is well below what Western executives earn, compensation has been rising very rapidly, doubling between 2005 and 2010. Big differentials between top executives mimic the 'tournament' pay structures in the West, creating strong financial incentives for executives to move up the corporate ladder.
*As in the West, those running the largest firms are paid the most, in accordance with the principles of a market that allocates the most talented people to the job slots where their productivity has the greatest impact. The sensitivity of pay to firm size is of the same magnitude as that found in classic US studies of the 1980s.
*China undertook a massive privatisation programme between 2001 and 2010. The percentage of publicly listed firms that were majority state-owned fell by almost half to 45 percent. As in the UK in the 1980s, executive compensation rose markedly in privatised firms - by around five percent in firms privatised between 2002 and 2010.
*Chinese ceos are able to 'skim' company profits when corporate governance is poor. Ceos get a ten percent premium if they start sitting on the compensation committee that determines their earnings. They get a similar premium if they become chairman of the board as well as CEO.
China's publicly listed companies have been the engine behind its real GDP growth of 250 percent. Between 2001 and 2010, the output of publicly listed firms grew nearly eightfold, accounting for 43 percent of total Chinese GDP by 2010. The listed sector's market capitalisation was equivalent to 81 percent of total GDP. Yet until now, little has been known about CEO compensation and whether China's corporate governance is 'fit for purpose'. Co-author Alex Bryson, Principal Research Fellow at the National Institute of Economic and Social Research (NIESR), comments: "Despite its very different political complexion, China's incentive schemes for top executives increasingly mimic those in the West."

France: free share awards made fairer

From now on, the number of qualified free shares awarded to employee equity plan participants in French companies must not exceed by a ratio of 5:1 the lowest number of free shares awarded to a rank-and-file plan participant. For example, in a group of employees, where one employee receives 100 free shares, no other employee may receive more than 500 free shares.
Until recently, the allocation of qualified free shares in France was not subject to any legal constraints, unless shareholders decided otherwise. Additionally, companies could award free shares within the limit of ten percent (or 15 percent for non-listed companies) of the company's ords capital. However, law nº 2014-384 of March 29 2014, introduced an allocation ratio between the largest and smallest awards of free shares and increased the maximum amount of free shares that can be awarded as a percentage of ordinary share capital. The new rules apply to awards granted on or after April 2 2014. These new provisions only apply to qualified free shares (i.e. no similar provisions have been introduced for qualified share options or non-qualified share plans), said Centre member **Deloitte.** It is not clear whether the new allocation ratio will apply for both all employee plans and discretionary plans.
The new law added a poison pill element to the potential defences of corporate takeover targets by increasing the total amount of qualified free shares that can be granted to a new limit of ***30 percent*** of the company's ords capital (regardless of whether the company is listed or non-listed). This new limit only applies where the free shares are granted to all employees. If the free shares have not been granted to all employees, the limit remains at ten percent (or 15 percent for non-listed companies) of the company's ords capital. This new law aims to equip companies to

fight more effectively against hostile takeovers and to encourage employee shareholding. Companies making grants of qualified free share awards now should consider whether they may potentially be in scope of the new rules. As the scope of these rules is unclear, it is recommended that a case by case approach based on the specifics is pursued.

Ireland

The union representing **Aer Lingus** pilots and cabin crew urged Finance Minister Michael Noonan and Transport Minister Leo Varadkar to vote against the €1.5m pay package of ceo Christoph Mueller at the airline's agm in May. He was paid a basic salary of €475,000 in 2013. However, he received two additional bonuses of €400,000 and €420,000, as well as a pension contribution of €175,000, bringing his total package to almost €1.5m. In letters sent to the two ministers yesterday, IMPACT National Secretary Matt Staunton described Mueller's salary and bonus package as an "insult to staff". He noted that staff were facing cuts in their pensions of "20 percent or worse", had suffered declines in income, and had also been informed of an 80 percent cut in their gain-sharing scheme. He urged the Government to use its 25 percent stake in the airline to vote against the remuneration report at the Aer Lingus agm on May 2. Staunton told Michael Noonan and Leo Varadkar that while the remuneration of the chief executive is a matter for the Aer Lingus board, it remains possible for the Government to voice its concerns on these developments, and to "act decisively where necessary". The pilots' branch of IALPA urged its members with shares in the airline to vote against the remuneration resolution at the agm.

Stan McCarthy's €10bn food behemoth **Kerry Group** introduced a claw back scheme for executive bonuses, which enables the company to retrieve incentive payments made to its management in the event of misbehaviour. The move comes as Kerry overhauled its executive pay schemes last year. "Other changes to the remuneration structures include the introduction of deferral and clawback for both the short- and long-term performance," according to the company. Clawbacks of bonus awards are becoming more widespread in major plcs but have been slow to take off among Irish-listed companies. Recently, the *Sunday Independent* revealed that **Bank of Ireland** governor Archie Kane had been hit by the clawback of most of his €907,000 deferred share bonus from his time running Lloyds Bank's Insurance division. Following his departure from Lloyds, it was engulfed by the €12bn payment protection insurance mis-selling scandal, which shattered its profitability. Kerry upped the amount of shares that key management need to hold. "Share ownership requirement levels were increased during 2013 from 90-100 per cent to 180-200 per cent of basic salary."

South Africa's largest fishing company, **Oceana Group**, will pay out $27.2m to employee beneficiaries of the Oceana Empowerment Trust, as value created through harvesting fishing rights is unlocked and converted into shared broad-based value. In 2006, Oceana established an employee share ownership scheme, the Oceana Empowerment Trust, in order to acquire a significant equity interest in Oceana and to hold the shares for the economic empowerment of eligible employees. The trust was intended to operate for the benefit of black employees, who are South African citizens and who are permanently employed or 'permanent seasonals' within Oceana. Currently the trust has 2,650 beneficiaries, who are located at various operating locations. With its 11.7 percent shareholding in Oceana, the value of the trust has increased significantly since its establishment. At March 2014 the market value of the shares owned by the trust was just over $113m. The payout will not only benefit the employee beneficiaries but will contribute to improving the livelihood of their families and communities. It will translate too into a significant contribution to the local economy in areas mainly reliant on fishing activities. Oceana Group ceo, Francois Kuttel, said he was proud that the money was being handed over to black employees who were now "authentic stakeholders and not simply passive shareholders in South Africa's formal economy". Minister of Agriculture, Tina Joemat-Pettersson said: "When government started talking about transformation in the fishing industry, some among us reacted with steely coldness". It was an unpopular move to mix corporate business with 'transformation' in one sentence, almost like forcing companies and society in general to do something that went against the grain, she said. The payout which will see employees receiving on average, $9,400 after tax each, comes after more than 75 percent of beneficiaries voted on a resolution to approve an extension of the lock-in period for the employee share trust. This positive result demonstrates a vote of confidence by beneficiaries in the company and its ability to continue to create value in the future. At the end of the lock-in period in 2021, beneficiaries who hold participatory rights in the Trust will be able to convert these rights into shares.

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