Vol 29 No 4 May 2015

it's our business

newspad of the Employee Share Ownership Centre

Parties tempt employee shareholders with different menus

The major political parties tabled various lite-fare menus to tempt employee share owners and the Eso industry as the General Election campaign reached its last lap.

Of the three hitherto major English parties, **Labour** most caught the eye by promising to support the creation of a *staff*-led trust to reinforce the huge bloc of employee shares held within **Royal Mail.**

This proposal was first made public at the Centre's London workshop last November, held on behalf of a European Commission backed project for the further development of employee share ownership within member states.

There is already an employee benefit trust (EBT) within Royal Mail, set up by the company and its Share Incentive Plan (SIP) administrator, **Equiniti,** but it is not controlled by employee representatives. During the workshop, Ivan Walker, of Walkers Solicitors, examined whether employee shareholders could use their *collective voice* to influence or adapt company policy. He pointed out that a corporate trustee was unlikely to take on a hands-on view of its power or duty to engage with the business from a long-term perspective. So the issue was whether another corporate body, like an advisory committee – a quasi trustee- could plug the gap. Of course a trade union could not dictate to the committee how it should proceed, but if employee shareholder union members all adopted a viewpoint and expressed it to the committee, then the latter would be obliged to take note. The Communication Workers Union (CWU), whose 150,000 postal worker members own more than ten percent of the Royal Mail's total equity, is very interested in this idea. Mr Walker was present at a blue skies meeting between the CWU's general secretary elect Dave Ward and the Centre chairman..

Labour's manifesto said: *"We will consider how to support employee buy-outs when businesses are being sold. We will safeguard the public interest in the Royal Mail, supporting the creation of a staff-led trust for the employee share and keeping the remaining 30 percent in public ownership. We will support the universal service obligation, ensuring competition does not undermine it and introducing protections as necessary."*

However, the potential implications of using the collective voice of union members who are employee shareholders in order to influence company policy might be very controversial, should Labour with the election.

From the Chairman

The parties in the UK election have failed to excite the electorate, in general and not only with their esop ideas. It is perhaps typical that none of them mention the employee ownership of the millions which we advocate and which can touch a large swathe of the electorate. Let them look up from their Westminster navels and make the SIP more flexible, boost the CSOP and create a more widely usable EMI. From reading the manifestos you would not have known there were a million employee shareholders ready to listen and many more ready to be wowed. All this after BT handed out over £1 bn to employee shareholders, Royal Mail gave shares to 150,000 workers and a Centre member could tell us in newsbrief that employees in a scheme he advised on received £50,000 each. Still the EMI was not in the Labour manifesto of the era.....the best ideas don't come from politicking.

Malcolm Hurlston CBE

Special two nights half-board accommodation package deal offer to plan issuers who would like to attend our annual conference in Rome on Thursday/Friday June 4 & 5: See inside pages for details.

On mutuals and related issues, **Labour's** support was carefully calibrated, if not muted. Its manifesto said: "*Our charities, mutuals, co-operatives and social enterprises are pioneering new models of production that enhance social value, promote financial inclusion, and give individuals and communities power and control. We will continue to support and help develop the social economy by improving access for co-operative and mutual organisations to growth finance through the new British Investment Bank."*

The **Tory** manifesto revisited the public sector 'right to mutualise' which wrongfooted the other parties and produced mixed results during the lifetime of the Coalition government. It said: *"We have supported the* *growth of public service mutual organisations that are owned by their staff and deliver public services. We want more of them, so we will guarantee a 'right to mutualise' within the public sector."* More than 100 local health service trusts – breakaways from the NHS – are employee-owned and mostly successful as stand-alone businesses. Typically, each employee member owns one share.

However, MyCSP was the only sizeable civil service department to set up on its own – initially in tri-ownership – state, employees and private operator - but now majority owned by Centre member **Equiniti.** MyCSP, the former civil service pension scheme administrator has been successful in acquiring new clients and profitability since it broke away from Whitehall. It was unclear whether another Tory-led government would be any more successful in getting other civil servants to go down the mutual path than it was first time round.

The Tories effectively offered some help to Eso – by the backdoor – by pledging to continue its sell-off of taxpayers' stakes in the bailed-out banks and building societies "in order to deliver value for money for taxpayers and support the economy." Such sales are often, though not always, accompanied by special discount share sale price offers to employees. The Tories apparently left hanging in the air the question of whether **Lloyds Bank** employees would be given priority status in a future state-held shares public sale as Royal Mail employees were, should the Tories win the General Election. **A newspad query to Central Office on this important point went unanswered…**

Shares in Lloyds Bank will be offered to private investors at a discount of 'at least' five percent to the market price if the Tories win, promised Mr Osborne. Lloyds shares currently are trading at around 78-79p, well above the base price of 73.6p a share paid by the previous Labour government. The minimum investment by members of the public in the Lloyds Bank shares sale would be £250, the maximum purchase £10,000 worth of shares and there would be a loyalty bonus for people who held their shares for at least a year. The sale would see £9bn of shares released for sale. Of these £4bn would go at a discounted price to small investors.

Labour put £20bn of taxpayers' money into Lloyds during the banking crash of 2008, acquiring a 43 percent stake. The coalition has already sold off £9bn of shares on the money markets, leaving a Government shareholding of 22 percent.

Lloyds employee share plans are administered by Centre member **Equiniti.** Share plans are an important component of reward at Lloyds Banking Group. Sharematch and SAYE-Sharesave offer all employees the chance to purchase shares from their monthly salary. Sharematch is a tax efficient plan which allows participants to invest between £10 and £125 a month from gross salary in Lloyds Banking Group shares. The group awards matching shares on a one for one basis, up to £30 a month. The Sharesave permits employees to save money each month from their net salaries. In addition, more senior employees are able to participate in the group's discretionary Long Term Incentive Plan (LTIP). Participants are offered the right to receive Lloyds Banking Group shares after three years, subject to the achievement of group performance conditions.

"Not only are we getting taxpayers their money back, we are going to do it in a way that gives many more people a stake in our economy and encourages a culture of long-term share ownership," Chancellor George Osborne wrote in the *Sunday Telegraph*.

Meanwhile, the **Lib-Dem manifesto** promised to**:**

* Encourage employers to promote employee participation and employee ownership, aiming to increase further the proportion of GDP in employee-owned businesses

* Change company law to permit a German-style two-tier board structure to include employees

* Strengthen worker participation in decision-making, including staff representation on remuneration committees and the right for employees who collectively own five percent of a company to be represented on the board

* Spread mutual structures and employee participation through the public sector

However, the Lib-Dems carefully avoided promoting *broad-based* employee share ownership in their manifesto. Coalition BIS Secretary of State Vince Cable always favoured employee *majority* ownership of SMEs.

On related issues, the messages from the rival camps were not so far apart…

Tory promise: Claw-back and bank reprivatisation: *"In order to ensure that new pay structures for bankers rebuild trust and reduce short termism, we will ensure that Britain continues to have the toughest regime of bonus deferral and claw-back of any financial centre."*

Labour's manifesto contained proposals to counter short-termism in the British economy, observed **Lawrence Green** of *Squire Patton Boggs*. There were three specific proposals on executive pay: *improving the link between executive pay and performance by simplifying pay packages, *allowing employee representation on remuneration committees and *fund managers to disclose how they vote on top pay. "The simplification of pay packages is intriguing – there is nothing to give a hint of what this will mean in practice. We will have to hope that the starting point will at least be a consultation process, if Labour wins" said Mr Green.

The introduction of employee representation on remuneration committees looked more specific. The Coalition consulted on this in 2011 and did not take it forward (possibly because the consultation responses showed how complex and cumbersome this might be in terms of defining the role and responsibilities?). The questions to be addressed include: *would the representatives have to be elected? *would the representatives be paid extra in the same way as the current non-executive director members and *what duties would the employee representatives have (e.g. confidentiality)?

"There is the issue too of how to avoid unintended consequences. Over the years the role and independence of remuneration committees has been enhanced by a series of changes to the corporate governance environment," said Mr Green. "Might the presence of employee representatives on remuneration committees reverse that trend, with committees being presented with fully-worked up proposals to be simply rubber-stamped in order to minimise the employee representative's role in policy formation?" he mused. A Labour Government might look for inspiration at the world of pensions. The requirement for pension scheme trustees to include employee representatives is drafted in a flexible and non-prescriptive manner. It has been in force many years and, after some initial teething problems, now generally works effectively, he added.

Executive packages and Eso case studies in Rome

KPMG Head of Reward Services, David Ellis, will explore the recent executive remuneration landscape when he speaks in Rome during the Centre's 27th annual European employee equity plans conference, which takes place on **Thursday June 4 and Friday June 5**. During the two-day programme, David will examine the issues of transparency, alignment of pay to long term success, stretching performance conditions and reducing complexity, asking how much change is on the way. He will discuss shareholder views pre and post agms and the emergence of consensus. Tackling potential excessive reward, he will ask - *How much is too much*? A more effective model to gauge the acceptability of a pay arrangement may be needed.

Imagination Technologies company secretary **Tony Llewellyn** will lead a case study on how this British-based semi-conductor, RD and licensing FTSE250 company remains dedicated to employee share ownership, despite a volatile share price and pressures exerted by expanding divisions in Europe and the US. Tony will discuss the implementation of the company's new worldwide hybrid share schemes.

Employee Benefit Trusts are sometimes not all that they seem… Delegates will have a unique opportunity to peer behind curtain hiding the 17 year **Roadchef** saga - the tarnished ex-poster boy of the Esop movement. **Chris Nott** of **Capital Law** and **Ann Tyler**, who had a ringside view at key times, will be recounting the background of the employee shares which were moved into a quite separate trust and the court-imposed solution. Centre chairman **Malcolm Hurlston** said: "Roadchef was initially our poster boy. We were lucky that the scandal did not damage our ideas, but there are serious lessons to be learned from what happened. It is remarkable that Capital Law stepped in and cut the Gordian knot."

Dave Ward, general secretary elect of the **Communications Workers' Union**, will discuss how postal workers are adapting to the introduction of the UK's largest employee share ownership scheme, a Share Incentive Plan (SIP), which has almost 150,000 member participants. Recently, 35,000 of these posties signed up to an SAYE, which is a first in the **Royal Mail.**

This Centre showpiece event is staged in the four-star **Residenza di Ripetta** hotel in central Rome and opens with an informal pre-conference delegate dinner on Wednesday June 3 at a traditional Roman restaurant.

Speaker confirmations have been received from: **Accurate Equity, Avanzi, Capital Law, Communications Workers Union**; **Imagination Technologies, Investment Association, KPMG, Pett, Franklin & Co. LLP, Primondell, Solium, Strategic Remuneration, Tapestry Compliance, Western Union** and international lawyers **White & Case.** Centre trustee members **Appleby Global** and **Bedell Group** are logo co-sponsors of the conference e-brochure, which can be downloaded from the event page: www.esopcentre.com/event/rome2015

Another Centre member, **Computershare,** is kindly producing the Rome delegate handbook.

*As a **special incentive**, the Centre is offering three further package deal delegate places to Eso plan issuer companies for the extraordinary price of **£525** (no sales tax payable) to include two nights half-board accommodation (*June 3 & 4*) in our conference hotel, plus admission to all working sessions, coffee break refreshments, an invite to our cocktail party (partners welcome) and a bound book of conference speech highlights. Contact Fred Hackworth to take up this offer.

Around 30 people have already registered, including mid-sized plan issuers.

Delegate fees:

Centre **member** delegates:

Practitioners: £1,135 Plan issuers: £675

Non-member delegates:

Practitioners: £1,750 Plan issuers: £765

The historic Residenza di Ripetta is a converted 17th century convent featuring frescoes, original arches and an inner courtyard with garden, plus a panoramic roof terrace offering views over central Rome. This hotel is superbly located between Piazza del Popolo, the River Tiber, Villa Borghese, Spanish Steps, the Field of Mars and Villa Medici. *Flaminio*, the nearest Metro station is five minutes away. Our discounted room prices* are available to those upgrading their rooms or extending their stay (subject to availability). Supplements charged for two person room occupation are only €26 extra per night. *You will pay a group rate of only c €250 = GBP 184 (at current exchange rates) per night if you wish to stay extra nights. For more information, including the Rome 2015 e-brochure, please visit the event page on our website. Your Centre Rome conference contact is Fred Hackworth. To book your place, please email fhackworth@esopcentre.com with a copy to: esop@esopcentre.com.

Centre member Sanne Group lists

Trustee member **Sanne,** the corporate administration provider, is now listed on the main market of the London Stock Exchange after raising £141.6m in an IPO, valuing Sanne Group at £232m. Sanne Group's shares were priced at 200p before floating on April 1, but opened at 221p per share, a ten percent premium on its listing price. Weeks later, its share price had risen to 257p, revaluing the business at £292m.

Previous majority holder Inflexion Private Equity said the IPO had generated a return of 3.7 times its original investment, making £113.6m from the sale alongside executive directors. The remaining £28m has been

earmarked for debt repayments and general working capital. It was a coup for the management who had a 23.6 percent share on launch day. Inflexion Private Equity retained an 11 percent stake.
"This is a significant milestone for the company," said Sanne ceo **Dean Godwin**. "In 2012 we partnered with Inflexion, a leading private equity investment business, in order to continue to pursue a long term strategy of building a high quality administration business through organic growth complemented by strategic acquisitions. This partnership has been very successful over the past two years, demonstrated by strong business performance across all divisions as well as the successful completion of two acquisitions from State Street."

Old friends among new Centre members
Ogier is delighted to support the ESOP Centre and to be associated with promoting and encouraging employee ownership of shares. Ogier provides advice on the British Virgin Islands, the Cayman Islands, Guernsey, Jersey and Luxembourg law through its global network of offices that cover all time zones and key financial centres. It employs the best people to ensure that it delivers high quality legal and practical advice. It aims to provide professional client services across all jurisdictions and service lines and Ogier regularly wins awards for the quality of its client service, its work and people. The Ogier employee incentive team offers a one-stop, full service to all its clients. Its specialist team of eight can provide non-contentious and contentious advice and support on the establishment or on-going administration of employee benefits trusts, shares plans and awards, employee share options, pensions and employment matters. It has a cross-discipline team which can provide regulatory and corporate support to ensure a full service on listings, takeovers and other corporate actions. It is well placed to offer a holistic service and clients include offshore and onshore major listed companies, trust companies, SMEs, accountants and pension trustees.
Key contacts: Steve Meiklejohn, Partner, Jersey, email: steve.meiklejohn@ogier.com Tel: +44 (0)1534 504462
Simon Dinning Group Partner, Jersey +44 (0)1534 504251 email: simon.dinning@ogier.com
Edward Mackereth Partner, Jersey +44 (0)1534 504320 email: edward.mackereth@ogier.com
Katherine Neal Managing Associate, Jersey +44 (0) 1534 753972 email: katherine.neal@ogier.com
Solicitor firm **Wedlake Bell** has rejoined the Centre. Wedlake Bell's expertise is focused on sectors that drive the economy: property, finance and banking, corporate, consumer trade and retail, e-commerce, government, healthcare, hotel and leisure, media, publishing and technology, natural resources, outsourcing, telecommunications and transport and logistics. The breadth of its services is focused on the core business needs for capital, assets and human resources. This includes employee rewards & equity arrangements, exit strategies and discrimination issues through to disciplinary and grievance matters, as well as employment contracts and policies. Its breadth of practice is reflected by its range of clients: from FTSE 100 companies, banks and financial institutions, ownermanaged private companies, to trade associations, governmental bodies, education establishments, charities and private investors. Wedlake Bell's approach is to be commercial, flexible and pragmatic; it works with its clients as a business partner and not simply as a supplier of legal services. The firm offers a package of linked services and is highly regarded in offering recognised expertise and a service capability which is second to none. Contact: Justin McGilloway +44 (0)20 7395 3000 email: jmcgilloway@wedlakebell.com

COMPANY NEWS
Three **Amlin** executive directors and eight senior managers were granted on April 2 2015 592 shares each under the company's Share Incentive Plan 2006 (SIP), an all-employee share plan under which all eligible full time directors and other employees were made an award of free shares worth a total £3000. Voting rights may be directed by the beneficiary whilst the shares are held in the SIP trust, for a minimum period of three years. The ords were sourced from the company's EBT and through the use of unallocated shares within the SIP trust.
Following a buy-out, **E A Gibson Shipbrokers** is now owned by an employee benefit trust (EBT) run on behalf of and for the benefit of all the company's employees. **Graeme Nuttall OBE** of Centre member **Fieldfisher** advised on the buy-out of the shipbrokers from **Hunting**, a leading listed international oil and gas services company. Instead of being a traditional MBO, the sale was to all 180 employees worldwide using an EBT. Mr Nuttall said**:** "The use of employee ownership in a spin-out from a listed company is further proof that employee ownership is establishing itself as a mainstream business model."

On the move
Dave Ward, deputy general secretary of the Communication Workers Union (CWU) will run the union as **general secretary** from June 1. Dave, a Centre friend who took part in our Florence workshop in a European Commission Eso project last year, defeated the incumbent general secretary Billy Hayes in a recent CWU election by a 55 – 45 percent margin. A very large majority of the 150,000 Royal Mail postal workers, who are all employee shareholders, are CWU members.
Norwegian ex submarine officer **Arne Peder Blix**,former ceo at **Accurate Equity,** is now co-founder and ceo of **Friend Software Labs** AS.
Mitan Patel is now business development director for Europe at **Computershare.**
Kay Ballard share plans manager at **Kingfisher** retired from employee share plans on April 30. She told *newspad*: "I'm going to while away the hours gardening, sailing, wining & dining and aged parent-sitting (not necessarily in that order)" Kay was based at Kingfisher's headquarters at Sheldon Square Paddington.
Bill Cohen, partner in **Deloitte**'s global employer services division, is off to climb a 6,000 metre volcano

in Ecuador for charity in July. He writes: "I and 49 colleagues from Deloitte are going to climb Cotopaxi, a 6000 metre high volcano in Ecuador. It will be challenging and fun and a terrific sequel to our successful ascent of Kilimanjaro four years ago. Our aim is to raise over £1m for three great charities Mind, Prostate Cancer UK and the Alzheimer's Society. All of us probably know someone who has benefitted from one or more of these charities over the years." If you want to support Bill, then please do so through his *Just Giving* account – full details at: www.justgiving.com/William-Cohen

Congratulations to **Rachel Benjamin** who starts her new post as company secretary at **Premier Oil** on June 1.

Shearman & Sterling's New York partner **Doreen Lilienfeld** has been named practice group leader of the firm's executive compensation & employee benefits group. Doreen, a speaker at Centre international conferences, serves on the firm's nine-member policy committee. Doreen is involved in a wide variety of compensation-related matters, including the design and implementation of retention and compensation plans, disclosure and regulatory compliance, and employment negotiations with senior executives.

Share scheme registration

Have you registered your share schemes, asks Centre member **Pett, Franklin?**

If there have been any reportable events regarding employment-related securities, including any form of unapproved share scheme, in the current tax year (2014/15), you must register the scheme with HMRC, and then report each event in an online annual return, before July 6 this year. HMRC will not be sending out reminders! If you fail to file a return you will be fined, so it is important to send in your annual return before the deadline.

HMRC has now moved to online filing for all share schemes. This means that in order to file your annual return, you must first: Make sure you have access to HMRC's PAYE online services and register your scheme online. It may take up to a week to register for access to HMRC's online service and up to five days for HMRC to process the registration of a scheme so you can report awards. HMRC's system only allowed people to register an unapproved arrangement or share scheme before April 6 2015 if a reportable event occurred in the fiscal year 2014/15. If you have established any unapproved or non-qualifying arrangement or scheme concerning employment-related securities (including any plan for the grant of EMI share options), but there has been no reportable event in 2014/15, there is no immediate obligation to register the arrangement or scheme. If you choose to do so in a tax year in which there has been no reportable event, you will then be obliged to make a nil return online for that year. It is normally the responsibility of either the employer or the person from whom the securities are acquired to report events in an online return. Events only need to be reported in an annual return by one person.

Reportable events include:

- Acquisition of shares, or interests in shares, by an employee
- Grant of options to an employee
- Exercise of share options by an employee
- Receipt of a benefit in cash or money's worth for an employee share option
- Assignment or release for consideration of an employee share option
- The falling away of restrictions attaching to shares held by an employee
- The disposal for consideration of restricted securities by an employee

Other events which give rise to a tax charge in relation to employment-related securities. This is not an all-inclusive list and you should take advice if you are not certain whether an event is reportable.

Events which take place in relation to a qualifying SIP, CSOP or SAYE scheme should be reported online to HMRC. However, each of these schemes has its own form of online annual return which should be filed separated. Each scheme will need to be registered with HMRC beforehand using HMRC's PAYE Online Services – this includes schemes which have already been made known to HMRC through paper filings in previous years! – so you should make sure this is carried out well before the deadline, added Pett, Franklin.

SME share scheme accounting

The **Financial Reporting Council** published a consultation on amendments to accounting standard **FRS102**, which deals with share-based payments (e.g. options) with a cash alternative. The amendments are aimed at aligning FRS102, which tends to be used by smaller companies, with the international accounting standards used by listed companies. The closing date for responses is June 1.

CONFERENCES

Joint Centre IoD conference: save the date

The Centre is jointly organising an employee share schemes for SMEs conference with the Institute of Directors, to be held at their Pall Mall headquarters on September 3. The full-day event is aimed at company owners, directors and other key decision makers in SMEs to help them decide whether to introduce an employee share scheme or deepen existing employee share ownership in their company.

Look out for further details, including how to buy tickets for the event.

Winter event Jan 28 & 29 2016

Dates for your diary: The Centre is pleased to announce that its next winter conference will be held in Davos on **Thursday January 28** and **Friday January 29 2016.** After hard negotiating, the Centre has obtained a remarkably favourable deal with the four-star **Seehof Hotel** in Davos Dorf: despite the strong swissie: as a result **all attendance fees will be at least £100 cheaper** than they were last February. Our illustrative *Early Bird* charges for the two nights half-board accommodation + conference + cocktail party package in the Seehof are: Speakers: **£825;** member practitioner delegates **£945;** non member practitioner delegates **£1450;** plan issuers **£495.** *No VAT is charged on these prices as the event takes place outside the UK.*

Tribunal victory for HMRC

The Upper Tribunal dismissed appeals by taxpayers against three cases which HMRC won in the First-tier Tribunal, reported Centre member **Deloitte**. One of them concerned a scheme designed to create allowable losses which involved the acquisition of options to acquire shares, the exercise of those options and payment, and the sale of the shares. It was claimed that the sale of the shares resulted in a capital loss which could be translated into an income loss under TA 1988 s 574 so as to be available against other income. According to a press release issued by HMRC, the Upper Tribunal dismissed the taxpayers' appeal without needing to hear argument from HMRC's counsel. The Tribunal has yet to give reasons for its decision. See http://deloi.tt/1G3dQIV. The Upper Tribunal (Henderson J and Judge Colin Bishopp) dismissed the taxpayer's appeal in the cases of Malcolm Healey v HMRC http://deloi.tt/1EYsICC and Savva and Others v HMRC, see http://deloi.tt/1EYsICC The Tribunal joined these cases because of similarities between the arrangements concerned. Both involved structured bank products, which were intended to produce a return equivalent to interest but treated as an exempt capital gain. The products essentially involved the sale to the taxpayers of corporate bonds from which some interest coupons had been stripped (i.e. the holder did not receive interest for a period). The planning instead involved the growth in value of the security through the holding period. In both cases the Upper Tribunal held that this represented a discount, which was taxable as income. (The law has in any case since been changed).

Pension scheme deficits weigh on FTSE companies

Six of the top FTSE 100 companies have pension fund deficits greater than their stock market capitalisation – including **Sainsbury, IAG, RSA, RBS** and **BT**. However, as these numbers are all 'off balance sheet' and are usually subject to valuations only once every three years, few City commentators appear to have even noticed. For the year ended March 31 2015, the UK Direct Benefit pension scheme funding position was: £1,282bn assets (all UK private sector schemes; £1,551bn liabilities and a total deficit of £269bn (almost double the level of the previous year), only 83 percent of which was funded, reported a *JLT Employee Benefits* survey. Debt-laden **Tesco** announced agreement with its employee pension fund trustee to pay in £270m a year in order to help contain the ballooning £3.89bn fund deficit. Tesco said it was consulting with employees about changing their direct benefit (final salary) pension scheme into a money purchase version. JLT director Charles Cowling said: "The increase in the total deficit in UK private sector pension schemes of more than £100bn in the last 12 months is a sober reminder of the burden that besets UK pension schemes. Low and even negative interest rates continue to give rise to ever bigger deficits and could prove particularly problematic for pension schemes with actuarial valuations in 2015. Demands from pension scheme trustees for more cash payments into DB pensions could escalate significantly."

HMRC guidance on FATCA

Following a recent clarification from the US Internal Revenue Service (IRS) – regarding the Foreign Account Tax Compliance Act (FATCA) - HMRC has removed the requirement for nil returns from UK financial institutions, reported lawyers *Dentons*. Where a UK financial institution is in a nil return position through applying the de minimis $50,000 or $250,000 threshold on pre-existing accounts, it will still be necessary to submit a return in order to make the election. New FATCA provisions mean that holding companies and relevant treasury companies are no longer defined as financial institutions. This is consistent with the terms of the inter-governmental agreement between the UK and the US. Unless such companies came within one of the other definitions of financial institution, they would have had nil to report in any event. They will now be classified as Non-Financial Foreign Entities, and either 'active' or 'passive', dependant on the activities carried out.

HMRC will issue further specific guidance for such entities shortly, which will be subsequently incorporated into revised guidance material to be published later this year.

If you need to submit a FATCA return you will need to register and report by **May 31** 2015.

To access the FATCA service you need to create an organisation type Government Gateway account, if you do not already have one. Once in the Government gateway, register for HMRC online services. FATCA is then listed as a service you can register for. You must register at least 24 hours before submitting your FATCA return.

Executive pay stalls, survey shows

Executive pay levels at listed companies are falling in real terms, says analysis published by Centre member **PwC**. Early reporting shows 45 percent of FTSE100 executives have received no salary increase this year and the median total pay figure received by ceos rose by just 0.7 percent. Findings from the first 39 FTSE100 remuneration reports of companies (with year ends from September 30 2014 to December 31 2014 that have reported up to March 25 2015) reveal that the median salary increase for ceos is around two percent, with around 45 percent of companies freezing salaries at current levels, up from 25 percent in 2014.

There are implications for those who believe that better corporate governance in business is reflected in part by the differential in pay at the top of business as compared to the rank and file – with implications for both employee engagement and business purpose.

According to PwC, in one fifth of these reported cases, ceos have chosen to waive their salary increase. The trigger appears to have been shareholder activism, rather than ceo conscience.

Most companies have introduced best practice remuneration structures in response to shareholder demands, said the report. Ninety-eight percent of companies have introduced measures to reduce or recover bonuses and long term incentive plans (LTIPs) in certain circumstances, known as 'malus' and 'clawback.' And 60 percent of companies now operate a holding period on their long-term incentive plan, requiring executives to hold shares after they have vested.

"Pay is getting harder to earn, with almost all companies introducing the ability to claw back bonuses and many lengthening the time executives have to hold onto the shares they get from long-term incentives. Remuneration committees are really raising the bar for executive pay" said Tom Gosling, head of PwC's reward practice.

Bonus payments to ceos have increased slightly for the first time after three years of decline, up by three percent. However, performance conditions on long-term incentive plans were harder to achieve: pay-outs fell to less than half (47 percent) of the maximum award available, offsetting improving share price performance. As a result, the total pay for ceos including salary, benefits, and all incentive plan pay-outs increased by just 0.7 percent with a median total pay figure of £3.5m.

Maximum incentive award levels proposed for 2015 are comparable to 2014, according to PwC, with 90 percent of companies leaving incentive opportunities unchanged. The median maximum pay opportunity for ceos if all performance targets are met is the same as last year – £5m. Only 20 percent of companies are bringing back the remuneration policy for a new binding vote, said the report. Two-thirds of the companies surveyed now disclose financial bonus targets used for the year just ended, and nearly half give full details of threshold, target and maximum performance levels required to earn bonuses.

"There's no doubt the new voting rules introduced last year have given shareholders more power and helped to bring greater stability to executive pay. Companies are improving disclosure of bonus payments and targets in response to investor demands" added Mr Gosling.

Centre member **Aon Hewitt**, the global talent and retirement business, released its 'Global Salary Increase Survey' which showed that UK employers continue to offer above average salary increases compared to those in most of the other larger European economies. Projected salary increases in the UK for 2015 are estimated at three percent, which represents a slightly more conservative outlook than the 2014 summer projections which measured salary increases at 3.1 percent. Even so, the 2015 projection is still consistent with the trend of the last three years in which salary increases have been stable at around three percent. Aon Hewitt's survey, conducted in January this year, contained data from 560 companies representing 5,390 employers across 31 industries and 121 countries, including results from 215 UK companies across all sectors and sizes.

Angst over bumper reward packets muted

BP ceo Bob Dudley got away lightly at this year's agm as an expected shareholder rebellion over his reward package fizzled out. Dudley's total compensation rose by more than 20 percent to £8.5m in 2014, when the company's profit fell owing to lower oil prices and production. Dudley's salary and annual bonus fell to $2.95m from $4.21m in 2013 but deferred bonuses and performance shares' awards rose to $9.79m from $5.96m a year earlier, according to a BP regulatory filing. Executive pay is regularly a thorny issue at BP's annual shareholding meetings. Last year some shareholders opposed approval of Dudley's 2013 pay, which tripled on 2012, citing outstanding legal suits in the United States over the Macondo oil spill in the Gulf of Mexico in 2010, but his reward was approved by a majority of shareholders. BP accepted a resolution proposed by environmental campaigners and pension funds, including the Church of England, requiring the oil company to report on whether its business complies with an international agreement to limit global warming to 2C. Royal Dutch Shell has already accepted the resolution, which bans executive bonuses for climate-harming activities. BP argued that it can retain top talent only by paying its executives competitive salaries, which are still far below those in the US. Rex Tillerson, the long-serving ceo of Exxon Mobil, earned $40m in 2012, falling to $28m in 2013. Chevron's ceo John Watson's compensation fell to $24m in 2013 from $32.2m in 2012. BP said its chief financial officer Brian Gilvary's total compensation rose to £3.07m from £2.17m while the long-serving head of downstream Iain Cohn, who left the company last year, received £5.81m, up from £3.71m in 2013. Two leading consultants had urged BP shareholders to vote against Dudley's 2014 total pay, saying it was not in line with the energy major's poor performance. **Glass Lewis** and **Pensions & Investment Research Consultants (PIRC),** which advise institutional shareholders and issue proxy vote recommendations, both said Dudley's remuneration exceeded that of its European peers. Investors have become increasingly vocal over executive remuneration in recent years. Governments have adopted new rules on pay transparency and given shareholders more power to block payouts

BG Group: The song 'Pennies From Heaven' doesn't do justice to the shedloads of cash being stuffed into the pockets of Norwegian Helge Lund, hired for an original £25m to run oil and gas company BG until his new employer bowed to investor pressure and reduced it a tad. Mr Lund hit the jackpot again - for no sooner his boots were under the table than Royal Dutch Shell came along with a winning £47bn takeover bid. Poor Helge will head for the departure door in November after just six months in the new job with a payoff of a mere £20m.

Prudential's departing ceo Tidjane Thiam sealed a £41m pay package over five years in the role. He is now ceo at **Credit Suisse.**

Sports Direct: Last year it took threats of a shareholder revolt to force the retailer to back down on a plan for a multimillion-pound bonus plan for its founder, Mike Ashley. Since then the billionaire, who is Sports Direct's deputy chairman, has lent credence to the belief that there is no check on his power at the company. He insisted he was too busy to appear before MPs to answer questions about zero-hours contracts – about 80 percent of the retailer's staff are on them – and the closure of a subsidiary in Scotland. The Institute of Directors said that Sports Direct's board was dysfunctional and did not check Ashley's powers. It urged shareholders to use the agm to show their dissatisfaction. Earlier this week Channel 4 television did a hatchet job on Sports Direct's "bargain" prices.

WPP: Sir Martin Sorrell, WPP's ceo, was caught up in the 2012 shareholders' revolt. Investors voted down his pay package, forcing the world's biggest advertising company to replace its long-term share scheme. But it has continued to pay out, and Sorrell's £36m share bonus for 2014 will take his total earnings for the year to more than £45m. Almost 30 percent of shareholders refused to endorse Sorrell's £30m payout under the scheme at last year's AGM and a further rebellion is expected in June. A fund manager at a big City investor says: "The people who opposed it last year will oppose it this year."

While front-line health workers struggle on stagnant incomes, **NHS** bosses are making as much as £1m a year. Even the heads of some of the UK's worst-performing hospitals have received bonuses of up to £5,000 a day, according to an analysis by the *Daily Mail*. Some NHS bosses, meanwhile, are avoiding tax by funnelling their salaries through their own companies. Others are taking advantage of a system originally put in place to help lower-paid nurses and other NHS workers stay working part-time, making it easier to get by on their pension. But this allows bosses to take huge pension lump sums early by quietly 'retiring' for a day, working part-time for a month, then returning to their posts full-time. Peter Herring, ceo of Shrewsbury and Telford Hospital NHS Trust, claimed a £252,000 tax-free lump sum by 'retiring' for 24 hours, before returning to his original job. Sue James, ceo of Derby Hospitals NHS Foundation Trust, netted a £155,000 payout by doing the same. Others quit their pension schemes when their pension pots reach the limit where the tax benefits run out, only to be 'compensated' with a higher salary.

On average, top NHS executives enjoyed pay rises of six percent last year, while nurses at the same hospitals have had their pay frozen for the last five years. *Sky News* calculates that if their pay rises had been kept to one percent - a figure which the government refused to award all NHS workers last year - the NHS could have recruited 1,300 new nurses as a result. The average salary of an NHS ceo in England is now £185,250, although 47 are making more than £400,000 a year. The highest-paid was Tricia Hart of South Tees Hospitals NHS Foundation Trust, who made £1.26m last year - even though the trust is currently running a £4.4m deficit.

'Selfie' star Rory Cullinan, the outgoing chair of **Royal Bank of Scotland** (RBS) investment bank, pocketed bonuses of more than £5m over the past year. Cullinan is reportedly leaving after disagreeing with senior management about the bank's restructuring. The *Sunday Times* reported that Cullinan had collected £5.2m from an executive pay plan since March last year. He is stepping down just weeks after he was appointed chair of the blue-chip lender's corporate and institutional bank, tasked with scaling down RBS' investment bank. His departure follows an embarrassing episode in which he was caught sending a selfie on messaging service Snapchat, complaining about a 'boring meeting' in a caption. However, media reports suggested that Cullinan had quit following a falling-out with senior management over strategy. He was the only member of the 80 percent taxpayer-owned lender's executive committee who was expected to get a bonus this year after the division shed more of RBS' unwanted assets than expected. The ST noted that although Cullinan's pay was not disclosed, RBS' most recent accounts showed that he had received a gross award of 2.5m shares last year. A total of 1.5m of those shares were paid out, meaning that he had landed a bonus of about £5.2m, based on RBS' share price.

Shareholders of Swiss investment bank **UBS** will be able to vote on the variable pay of its directors and top executives for the first time at its agm in May. The company said shareholders would be able to vote on variable compensation – mostly bonuses – for the main executives in 2014 and their salaries in 2016. UBS said: "The shareholders' vote on the aggregate variable compensation in relation to the preceding year allows shareholders to make an informed decision on compensation considering pay in light of actual performance achieved. As in previous years, there will be an advisory vote by shareholders on the compensation report at this year's agm."

The average bonus paid out to employees in **New York** City's finance industry hit $172,860, the highest level since the 2008 financial crash, according to figures released by the New York State Comptroller. Even after adjusting for inflation, the average Wall Street bonus is five times greater today than it was in 1987. The bonus pool for Wall Street financial firms rose by some three percent in 2014 to reach the astronomical sum of $28.5 bn. The Institute for Policy Studies notes that the total bonuses handed to Wall Street employees amount to double the total annual pay for the 1m US employees employed full time at the federal minimum wage of $7.25 per hour.

The typical Wall Street bonus is three times the annual US median income and almost four times the annual pay of a typical US employee. The report notes that the Wall Street bonus pool was 27 percent higher than in 2009, the last time Congress raised the minimum wage.

According to the New York Post, the average total pay on Wall Street including bonuses is now $355,900—five times the private sector average in New York City. The rise in bonus payouts on Wall Street comes despite a 4.2 percent decline in security industry profits. That makes the bonus pool 170 percent of total profits and 40 to 50 percent of total revenues. 2014 was the second year in a row that bonuses have risen despite a decline in profits. Last year brought plumped-up pay packages for four of the five highest-ranking **Eli Lilly** & **Co** executives, including ceo John Lechleiter. Total pay for the four climbed 28 to 30 percent over 2013, thanks largely to higher valuations on their pensions. The executive compensation numbers for 2014 were released by Lilly in its annual proxy report to shareholders. The report shows a return to beefed up executive pay packages in 2014 after a year of declining pay in 2013. The Indianapolis drugmaker has been struggling to cope with patent expirations on its leading medicines the past several years and its declining profits during that time have helped to dampen or reduce the lucrative pay packages to its top executives. Ceo and chairman John Lechleiter led the way in pay in 2014, getting $14.48m, a 29 percent jump over 2013. Most of the increase came from a $4.3m increase in the valuation of his pension. Lechleiter's salary remained frozen at $1.5m; he received the same $6.75m stock award as in 2013 and his incentive plan payout fell 38 percent to $1.8m.

Major shareholders in **UK** banks want lenders to stop paying bonuses based on adjusted earnings that exclude fines, restructuring costs and non-core units, raising the prospect of protest votes at agms. "I'm really uncomfortable about banks paying themselves bonuses on the basis of core earnings, not statutory profit," said a top 20 investor in Barclays and HSBC. "That is something we are exercised about and we have told them so."

Using adjusted or underlying profits to calculate bonuses means banking executives can pay themselves handsomely even if there is a drop in statutory earnings. Several major shareholders in British banks said they were so concerned about the issue, that they had raised it with executives and would consider voting against the banks' remuneration reports. Although some companies outside the financial sector use adjusted earnings to calculate bonuses too, investors are more concerned about banks because many have large non-core units and hefty legal and restructuring costs. The top 20 investor in HSBC and Standard Chartered, said: "It is typical of executive pay schemes that the banks and some companies exclude the bad stuff."

Antony Jenkins, Barclays ceo, received a bonus of £1.1m — his first since he took the top job in 2012 — partly based on adjusted profits rising 12 percent to £5.5bn last year. But including non-core operations and the cost of legal provisions and restructuring, the bank made an attributable net loss for shareholders of £174m. Barclays, however, said in its annual report it had taken account of litigation costs in reducing Mr Jenkins's bonus from the maximum he could have earned. A bank source pointed out that dividends were calculated on the basis of adjusted earnings.

Pirc recommended shareholders to vote against the Barclays remuneration report, although other agencies were in favour, such as **ISS** and **Glass Lewis.** The top 20 investor in Barclays, Lloyds Banking Group and HSBC, said: "We are unhappy at the way the remcos [remuneration committees] favour the employees in the way they hand out bonuses by aligning all the good things to the bonus and stripping out all the bad things. The banks are bad when it comes to this. It is a vexing issue. It is like comparing chalk and cheese. This is an issue that could spark some rebellions at agms over remuneration."

Bankers' bonus storm in the low countries

Anger swept the Netherlands over nationalised ABN Amro's executive pay packets. Dutch newspapers and other media outlets were awash with debates over the justification of how ABN Amro's high ranking executives were getting huge bonuses ahead of the bank being reprivatised. The outcry was so bad that Dutch finance minister Jeroen Dijsselbloem delayed the IPO of the nationalised bank at the end of March because the row over giving six executives a €100,000 (£73,000) bonus, on top of their salaries, had escalated so much. He even went to Parliament to answer questions over how the government was "allowing" the bank to pay hefty bonuses, compared to what the average Dutch person receives in a year, even though it is still yet to be privatised, after being taken over by the state in 2008. He said he was "guilty" of not making it clearer that ABN Amro had decided on the agreed bonus payments, sooner. The Dutch government initially hoped to make €15 bn from the IPO. This is still less than half the total amount the state paid to rescue the bank in the wake of the credit crisis. Meanwhile, the bank only posted an underlying profit of €1.5 bn in 2014.

ABN Amro said later that six managing directors had renounced their bonuses because of the "public commotion" around pay: "Now that our remuneration is the subject of discussion and threatens to affect the future of ABN Amro, we are putting the interests of the bank and the public first – as we always do – and have decided to renounce the allowance. We hope this will bring the bank in calmer waters." A day later, the non-executive head of ABN Amro's remuneration committee Peter Wakkie stepped down. He said he considered himself "particularly responsible for the decision regarding the now cancelled salary increase for six managing board members and the commotion that ensued over that decision."

OECD/BEPS Discussion Draft: Action 12: a mandatory disclosure regime

The OECD released a consultation document which considers the possible design options for a model mandatory disclosure rule. The disclosure of tax avoidance scheme rules, which were introduced in the UK in 2004, is referred to extensively in the document. It set out recommendations on the design of a disclosure regime for international tax schemes. They include:

* An arrangement that incorporates a cross-border outcome would be reportable if it involves a domestic taxpayer. A domestic taxpayer would be treated as involved in a cross-border arrangement where the arrangement will have a material impact on the taxpayer's tax reporting position. This will include a transaction with a domestic taxpayer that has material economic consequences for that taxpayer or material tax consequences for one of the parties.

* The cross-border outcome arises in the same controlled group or the taxpayer is party to the arrangement

* Where the person making the disclosure does not have enough information to provide a clear understanding of the arrangement, he or she must identify the person believed to hold the missing information and certify that requests for that information have been made to that person.

If an international disclosure regime is introduced, the associated hallmarks will be of key importance. The document recommends that countries develop hallmarks which focus on particular cross-border tax outcomes that give rise to tax policy or revenue concerns in the reporting jurisdiction. It might be expected that they would follow the specific UK hallmarks (for example, the leasing hallmark) so as to provide useful information without undue compliance costs and uncertainty.

Centre prepares submission on Prospectus Directive

The deadline for replies to the European Commission's consultation about its 'shake-up' review of the **Prospectus Directive (PD)** is **May 13**. The PD was implemented in 2005 and was subsequently updated following a review in 2010. The Directive, together with its Implementing Regulation No. 809/2004, lays down rules governing the prospectus that must be made available to the public when a company makes any sizeable offer or an admission to trading of transferable securities on a regulated market within the EU. The prospectus contains information about the offer, the issuer and the securities, and must be approved by the competent authority of a member state before the offer or the admission to trading of the securities.

Given the importance of making progress towards a Capital Markets Union, the Commission decided to bring the review forward. It seeks to ensure that a prospectus is required only when it is truly needed, that the approval process is as smooth and efficient as possible, the information that must be included in prospectuses is useful and not burdensome to produce and that barriers to seeking funding across borders are reduced.

The Commission believes that there are several potential shortcomings of the current prospectus framework, as follows, said lawyers *A & L Goodbody*:

The process of drawing up a prospectus and having it approved by the national competent authority is often perceived as expensive, complex and time-consuming, especially for SMEs and companies with reduced market capitalisation;

Member states have been inconsistent in applying the flexibility in the Directive to exempt offers of securities with a total value below €5m;

The requirement to produce a prospectus appears to be triggered at different levels across the EU;

There are indications that prospectus approval procedures are, in practice, handled differently between member states; and

Prospectuses have become overly long documents, which has brought into question the effectiveness of the Directive from an investor protection perspective.

The objectives of the review of the Directive are:

to reform and reshape the current prospectus regime in order to make it easier for companies to raise capital throughout the EU and to lower the associated costs, while maintaining effective levels of consumer and investor protection; and

to update it to reflect market and regulatory developments including the development of multilateral trading facilities (MTFs), creation of SME growth markets and organised trading facilities (OTFs), and the introduction of key information documents for packaged retail and insurance-based investment products (PRIIPs).

The consultation paper seeks feedback on various questions: Is the principle, whereby a prospectus is required whenever securities are admitted to trading on a regulated market or offered to the public, still valid? In principle, should a prospectus be necessary for: admission to trading on a regulated market; and an offer of securities to the public? Should a different treatment be granted to the two purposes (i.e. different types of prospectus for an admission to trading and an offer to the public).in order to better understand the costs implied by the prospectus regime for issuers: Please estimate the cost of producing the following prospectuses: equity prospectus; non-equity prospectus; base prospectus; and initial public offer (IPO) prospectus. What is the share, in percent, of the following in the total costs of a prospectus: issuer's internal cost; audit costs; legal fees; competent authorities' fees; and other costs. What fraction of the costs indicated above would be incurred by an issuer anyway, when offering securities to the public or having them admitted to trading on a regulated market, even if there were no prospectus requirements, under both EU and national law?

The prospectus, once approved by the home competent authority, enables an issuer to raise financing across all EU capital markets simultaneously, so are the additional costs of preparing a prospectus in conformity with EU rules and getting it approved by the competent authority outweighed by the benefit of the passport attached to it?

The Centre is consulting its steering committee and other members are welcome to contribute views. Responses to the consultation paper should be made through the online questionnaire by **Wednesday May 13 2015**. On the basis of the responses, other feedback and its own analysis, the Commission will decide how the PD can be amended. Proposals for such amendments will be prepared in the second half of 2015 and be presented to the European Parliament and Council, together with the review of the application of the new Prospectus Directive early in 2016.

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