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it's our business

newspad of the Employee Share Ownership Centre

Storm over Osborne's 'Sign Away Your Rights' Eso plan

A storm of controversy greeted Chancellor George Osborne after he announced a proposed radical change in employment law, designed to increase broad-based employee share ownership, especially in SME companies.
The Chancellor chose the Tory annual conference as his platform for unveiling a voluntary, three-way deal in which employees can be given up to £50,000 worth of shares in a business in return for giving up employment protection rights, such as unfair dismissal.
For its part, the government would ensure no Capital Gains Tax (CGT) would be levied on gains made by new employee-owners with the special shares they had been given by their employers.
The Treasury explained: "Employees will be given between £2,000 and £50,000 of shares and value gains will be exempt from CGT. In exchange, they will give up their UK rights on unfair dismissal, redundancy, and the right to request flexible working and time off for training, and will be required to provide 16 weeks' notice of a firm date of return from maternity leave, instead of the usual eight."
A consultation, setting out plans for a new employment status called an 'employee owner' was published last month by Business (Employment Relations) Minister Jo Swinson, but the share schemes industry has been given only until **November 8** to frame responses.
Legislation to bring in the new employee owner contract was being introduced via the Growth and Infrastructure Bill, with the aim of allowing companies to offer the new type of contract from April 2013.
The Chancellor wants to provide companies with a new option to increase the flexibility of how they hire people and help their companies grow.
Employees taken on this way will retain all of the rights associated with other employees except for:

- unfair dismissal rights (apart from automatically unfair reasons and where dismissal is based on discriminatory grounds),
- rights to redundancy pay,
- certain statutory rights to request training
- the statutory right to request flexible working
- employee owners will have to give more notice to their employer of their intention to return from maternity or adoption leave early.

From the Chairman

Today's good news about the Osborne initiative is that it will not fish in the same financial pond as the share schemes we know and love.
This is especially good news for the CSOP which needs nothing more than a good rebrand and government publicity. Our survey delighted and surprised me with the power of the responses especially as the scheme serves more than one purpose. Enterprise sounds all very flashy but the spread of capital wealth is what our economy and society need most of all.

Malcolm Hurlston

Ms Swinson, said: "We know that engaged employees are more productive and motivated. This scheme increases the options for business and brings greater flexibility to companies and employees in determining their employment relationship. By responding to the flexible needs of fast growing companies, it will help them take people on, providing a real incentive for employers and employees. It will be entirely voluntary for the employer to offer the new status – and for an individual to choose to accept it. An employer will be able to choose the new status and still choose to offer more rights to their staff (e.g. the right to request flexible working or higher levels of contractual redundancy pay). Companies of any size will be able to use this new kind of contract, but it is principally intended for fast growing SME companies that would benefit most from a flexible workforce.The consultation sets out the proposal in detail and asks for views on how the government can implement it. This consultation is focused on both employment law and company law issues." The Treasury will be consulting on the tax issues separately.
Owner-employee status will be optional for existing employees the Chancellor said, but both established companies and new start-ups can choose to offer only this new type of contract for new hires. Companies recruiting owner-employees would continue to have the

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option of inserting more generous employment conditions into the employment contract if they want to.
Some Centre members are sceptical about the value of the 'Sign Away Your Rights' for Shares plan and almost two-thirds of Britons are opposed, according to a ***YouGov*** poll of 1899 adults
Even the **Confederation of British Industry** (CBI) was lukewarm. Its Director General John Cridland said: "In some of Britain's cutting-edge entrepreneurial companies, the option of share ownership may be attractive to workers, rather than some of their employment rights. But I think this is a niche idea and not relevant to all businesses."
Reaction from the media was generally hostile:
Channel 4 News's economics editor Faisal Islam tweeted: "All those labour rights given up for as little as £2000 in potentially worthless shares."
The Scotsman said: "Share ownership is worth encouraging, but Osborne's plan would have the effect of toxifying it. By using a negative scenario as a condition of share ownership, rather than, say, performance or loyalty, it would give such schemes a new stigma. It creates new complexities and potential legal risks for employers, adding up to costs that would deter them from offering share incentives of any kind. It implies, wrongly, that employees attach little value to their rights. The only conclusion to be drawn is that Osborne's solution to a non-existent problem would create countless problems of its own. Thankfully, however, the odds on this proposal joining the long list of Coalition government U-turns are narrowing by the day," it added.
The Lawyer said: "One of the main benefits that can stem from employee share ownership is enhanced engagement. We would question whether removing employment rights - especially through a 'take it or leave it' form of recruitment - could be seen to dissipate such engagement through a sense of reduced job security and a lack of practical influence. The Government's approach to wider employment law reform can be portrayed as containing more than a hint that employment rights - or perhaps more accurately the misuse by employees of certain rights - create unwarranted burdens on business that prevent or dissuade employers from hiring staff and reduce competitiveness. As lawyers advising employers we appreciate that aspects of the unfair dismissal regime can create burdens, but the suggestion that unfair dismissal protection is an inevitable barrier to recruitment seems to lack a firm empirical base, particularly when the qualifying period to claim will increase to two years," it added.
However, the **Institute of Directors** praised Mr Osborne's 'innovative' plans on employee ownership: "This scheme has the potential to reduce the employment law burden on companies and make employees better off at the same time. The key to the success of the idea would be in encouraging employers and workers to make use of it." Said an IoD spokesman.
Centre member **Deloitte** said: "This is an interesting and innovative idea that may promote some flexibility in the jobs market. It is likely to be of greater interest to small enterprises with high growth prospects. However, unless wider scope is allowed for participants to defer the payment of any tax liability arising in respect of the award of shares (for which there is no market) until those shares are ultimately sold, take up could be limited.
"It is questionable to what extent employees would be willing to give up some of their employment rights in return for an award of shares, which would be liable to income tax on award and where, at an individual level, the CGT benefits may not be that valuable.
"From an administrative perspective, complexities will arise in respect of valuation of company shares awarded. This will particularly apply for private companies but can be an issue where (listed) shares are subject to restrictions. The government has stated that it does not wish to impose additional administration/ cost in respect of such valuations, but it remains to be seen how the government would seek to achieve this in practice."
The **Centre** wants to ensure that employees are properly educated about what's involved before they accept a new contract with 'free' shares from an employer under the Chancellor's scheme. Centre chairman **Malcolm Hurlston** said: "It is good to see new thinking on employee ownership. Where employees can freely choose more risk in return for the chance of a tax-free capital reward, there is little to quarrel with. For the rest, we look forward to examining the final proposition in detail."
UK director **David Poole** explained that the Centre was preparing a response to the plan, which would point out technical issues and highlight the importance of information. He said: "It will encourage wider employee share ownership which is our mission statement, but at the same time we want to do that responsibly. If there's a decent enough education package around employees understanding exactly what they're getting into and what they're signing, then we'll probably support it, if it's technically feasible. But if that's not right, there is probably too much risk."
The Chartered Institute of Personnel and Development (**CIPD**) was very critical: Mike Emmott, CIPD employee relations adviser, said: The UK has one of the least regulated labour markets in the world and there is little evidence to suggest that employment regulation is preventing small businesses from taking people on. In fact, according to the Governments own research, unfair dismissal doesn't even figure in the list of top ten regulations discouraging them from recruiting staff. Employees have little to gain by substituting their fundamental rights for uncertain financial gain and employers have little to gain by creating a two-tier labour market. It is far from clear how attractive the offer to give up employment rights in return for shares will be to prospective employees of small firms. More important, it is highly doubtful whether inviting employees to sign away basic

employment rights will deliver the motivated, driven, high performing workforce that small firms need. Existing, highly successful mutually owned firms do not thrive on employee ownership alone, but on the high trust, high engagement, all-pulling-in-the-same-direction cultures they have. Employee ownership works best where it is accompanied by great management, rather than enhanced job insecurity."

One of the Chancellor's strongest supporters was **Hermann Hauser**, founder of **Amadeus Capital.** He said: "We have seen in our own companies the highly beneficial impact of wide employee share ownership. Even a relatively modest stake gives employees a much increased sense of involvement in the fortunes of the business they work in. This often results in improvements in motivation, performance and job satisfaction. That gains from the shares they acquire under this scheme will be free of CGT can only strengthen this effect. On the other hand, many small employers are deterred from hiring new employees by fear of the cost and time involved in removing someone who fails to perform. If a business is not large enough to have a dedicated human resources department, the burden of the complicated and costly dismissal process – and the employment tribunal which often follows – falls on the entrepreneur who would otherwise be focused on growing his or her business. The rules as they stand result in slower growth and less employment at a time when growth and employment are sorely needed. It is important to note that embracing this scheme is entirely voluntary for employers and employees. Nobody is being forced to accept this type of contract. But we believe that many will want to. The scheme will mean that more highly mobile entrepreneurs setting up exciting innovative businesses will choose to locate them in Britain rather than in countries such as the US, which until now have had more flexible labour markets."

TUC general secretary Brendan Barber deplored the possible attack on maternity provision or protection against unfair dismissal. He added: "These complex proposals do not look as if they will have very much impact as few small businesses will want to tie themselves up in the tangle of red tape necessary to trigger these exemptions."

David Pett of Centre member Pett, Franklin & Co. Ltd asked searching questions about the scheme. He said: "If the proposal is to be successfully implemented, a number of important issues will need to be addressed:

*Will the employee still be charged to income tax and NICs on the initial value of the shares? If so, thought must be given to how the tax will be funded. If the shares are readily convertible assets, then the tax will be due under PAYE, and attract NICs.

*How will the shares be valued? If the normal bases of valuation are used, the shares may be of relatively small value allowing relatively large holdings in smaller 'start-up' companies to be acquired at a low initial cost. In effect, this would appear to be, in part, a means of extending the Enterprise Investment Scheme to employees who are not directors – but without the up-front relief from income tax.

*There must, presumably, be restrictions upon the type of shares to be used. It would otherwise be all too easy to offer a form of growth share that would allow the employee to secure disproportionate growth in value with full CGT relief. Conversely, shares of a class with undue restrictions might allow unscrupulous companies to entice employees to forgo employment rights in exchange for shares, which prove to be relatively worthless. If the company has third party investors and multiple classes of shares then, presumably, the shares to be used will need to be ordinary shares with rights which are *no less favourable* than those attaching to any other class of shares. Could the shares used be of a class that has *more favourable* rights than those attaching to shares held by other non-employees?

*The government will consult on the details of restrictions on forfeiture provisions to ensure that an employee who leaves or is dismissed may be obliged to offer back the shares 'at a reasonable price.' It appears that employee pre-emption rights (i.e. the obligation to offer shares for sale on leaving) will be permitted, but only on the basis that the price at which the shares are sold must be not less than their market value. Given that, unless and until any person is able and willing to buy shares in the company, or the company is floated on a public market, the value of a small minority holding in an unquoted private company affording no element of control or influence, is worth little to man or beast, one can envisage a pressure to dismiss all those employees holding such shares in advance of an exit event, simply to allow controlling holders to increase their stake at little cost. The natural uplift in value, from 'minority interest' basis, to 'pro rata' basis, which accrues upon a sale of the whole of the issued share capital, would then be lost to those former employee-owners. It is difficult to see how to protect against such abuse.

Mr Pett continued:

*What price is to be ascribed to the surrender of employment rights? Will there be a standard tariff? An employee of a larger quoted company might be enticed to forgo his rights in exchange for, say, £10,000 worth of shares, but how does this compare with an employee of a smaller unquoted company asked to forgo a similar level of employment security, but for shares with an initial value that might, on ordinary valuation principles, be of substantially lesser value? To what degree is it appropriate – or possible – to factor in any hope value when valuing shares for these purposes? The initial value of shares in a start-up company may be close to zero: is it right that an employee forgo his employment rights in exchange for such a speculative investment?

*How will the taxation of the shares fit within the existing tax regime for employment-related securities? If the shares cannot rank as 'restricted shares subject to a short-term risk of forfeiture,' then it will not be possible to defer any up-front charge to income tax on their initial market value, as would normally be the case (in the absence of a tax election under s431 ITEPA 2003).

*Can the shares be awarded under an HMRC-approved Share Incentive Plan? It appears not – hence our

presumption that there is to be no relief from income tax on their acquisition.
*The use of share options appears to be ruled out, although the announcement refers to participating employees remaining eligible to be granted EMI options (if the company and the individual otherwise qualify)
*Will part-timers be eligible? If so, on what basis will the value of the shares to be offered to them be assessed relative to those offered to a full-time employee?
"As can be seen from this handful of initial comments, to become a workable arrangement, which does not allow for misuse or abuse, will require much thought and engagement with all interested parties," added Mr Pett.
The new status won't allow employers to avoid liability for dismissals which are discriminatory or which are unfair under EU-derived legislation, such as the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), which give employees protection on the transfer of a business; and if the owner-employee status only involves a waiver of the right to bring an 'ordinary' unfair dismissal claim and owner-employees may still claim that their dismissal was discriminatory or was made in connection with the transfer of a business (for example), this could well drive an increase in these types of claims instead, with owner-employees trying to force their claims into these categories, thereby undermining the value of the owner-employee status for companies.
Other critics said that as only a small number of shares would be involved, there would be no real power for owner-employees and no true sense of employee-ownership. Furthermore, there would be uncertainty about any financial return on a shareholding in a private company;
Treasury officials expect the tax relief from the Chancellor's scheme to be worth £100m by 2017/18, which equates to about 90,000 employees, twice the total for EMI & CSOP combined.
Ref: http://news.bis.gov.uk/Press-Releases/No-capital-gains-tax-on-employee-share-ownership-for-new-employee-owners-68152.aspx

Government postpones employee statutory right to request share schemes

The Government has delayed for three years a final decision as to whether employees in UK companies without share schemes should be given the legal right to demand them from their employers.
Instead, ministers will encourage the development of a voluntary written guide through which staff and employers may co-operate when employees request an employee ownership plan as a business solution.
This emerged in the small print of the Department for Business, Innovation & Skills' formal response to the Nuttall Review of Employee Ownership.
Nevertheless, the Coalition Government, or at least the Lib-Dem part of it, has almost whole-heartedly accepted the detailed blueprint set out by lawyer and Centre member Graeme Nuttall for a major increase in the number of UK employee-owned businesses within the next few years.
BIS announced a string of initiatives, in line with almost all the main recommendations in the Nuttall Report, which ministers have been studying since its publication last July.
These initiatives will commit the government to:
* Establish an Implementation Group, chaired by Jo Swinson, Minister for Employment Relations, bringing together representatives from Government, business and professional services and the employee ownership sector to drive the implementation programme. The group will hold its first meeting in November
* Work with the employee and wider mutuals sector, assessing the viability of setting up an independent Institute for Employee Ownership to raise awareness of employee ownership and provide a single point of contact for information and advice to help companies establish it
* Work with mainstream organisations including the Institute of Chartered Accountants in England and Wales (ICAEW) and the Law Society to develop simple 'off the shelf' templates for setting up an employee owned company and make these readily available through professional advisers.
* Organise a Ministerial programme of regional activity to raise awareness of employee ownership
* Work with the John Lewis Partnership to examine the barriers to funding for private sector employee-owned companies
*Work with the ESOP Centre to help spread the good news about the advantages of employee share ownership and employee ownership, particularly in the SME sector.
*Work with HM Revenue and Customs to consider the guidance currently available on tax issues relating to employee ownership.
The Govt has asked the **ESOP Centre** to run a pilot event outside London to help build up small and medium size business awareness of employee share schemes as potential key instruments in their planning.
Centre UK director David Poole told *newspad* that the target date for the pilot seminar and conference is Thursday March 7. The venue will be Bradford with Centre member YBS Share Plans as host. Members – both service providers and plan issuers - interested in taking part in this event should contact Dave at Centre HQ: Tel 020 7239 4971 or email: dpoole@esopcentre.com.
Much hangs on the Employee Ownership Index's definition of 'employee ownership,' as in FFW's quarterly index of company performance, in which anything north of ten percent equity ownership in a company qualifies as an 'employee-owned' company.
The Centre, which supports majority employee control only in very special circumstances, can live with this formula and can therefore support the Government programme, based on the Nuttall Report.
"The Government wants to help boost the size of the sector, by ensuring employee ownership is more

widely understood and easier to establish," said 'Eso minister' Jo Swinson**.** "There has never been a more important time to create the right environment for different ways of running a business. Employee-owned companies have proved to be flexible and resilient during tough times, and have a clear role to play in securing long-term economic growth. So I'm very pleased to be taking the first steps to implementing Graeme Nuttall's recommendations."

The decision to postpone implementation of Mr Nuttall's 'Right to Request' recommendation was not in the main text of the Government's media release; it was confined to a footnote, though a more detailed explanation in its 23 page document entitled *'Government Response to the Nuttall Review – Next Steps For Employee Ownership'* This said:

"A call for evidence on a proposed new 'Right to Request' employee ownership was launched alongside the publication of the Nuttall report in July. All respondents were in favour of the principle but most were against the idea of a statutory 'Right to Request' because of the potential regulatory burden on business and employer. Government will now work with ACAS (the arbitration & conciliation service) and others to develop a guide to support employers and employees interested in requesting and agreeing employee ownership.Broadly, the 'Right to Request' advocated by the Nuttall Review aims to achieve in the private sector what the 'Right to Provide' enables in the public sector. The 'Right to Request' is modelled on provisions in employment law and seeks to encourage employees to develop employee ownership proposals and make a 'Request' to their employers, who would then be required to consider the proposal.

"The objective as set out in the Nuttall Review is to encourage more discussion about employee ownership and to provide a 'nudge' to employees and employers to consider the concept more than they may have done previously. A key question posed in the call for evidence, and raised by the Nuttall Review, is whether Government should introduce a statutory 'Right to Request', or rather a voluntary arrangement with no sanction or legal force behind 'Requests' made by employees. More respondents were against the idea of introducing such a statutory 'Right to Request' than those who supported it. The most commonly cited reason was associated with the regulatory burden upon business and employers that would be risked by a statutory Right. Respondents pointed towards:

- The costs of familiarisation with new law;
- The complexity likely to follow from providing legal definitions to underpin the various stages of a 'Right to Request', and the onerous procedures that may be necessary to comply with the law if that was the case;
- The risk of impeding legitimate corporate transactions as 'Requests' are reviewed; and
- The threat to employee relations in a company should a 'Request' be refused or during the process of developing a collective position amongst employees before a 'Request' is made.

The call for evidence responses highlighted significant concern about the regulatory burden of a 'Right to Request'. Any future regulation and statutory 'Right to Request' will need to be designed and implemented with that in mind and ensure that the benefits of regulation outweigh those burdens. To help achieve this objective, the Government will monitor the progress and uptake of the voluntary guide and will make a final evaluation of whether a statutory 'Right to Request' is justified three years after the guide has been in place.

Alongside its response, the Government launched a consultation on amending company law to reduce the regulatory burden faced by employee owned companies. In businesses where employees hold a direct stake, the company often needs to buy back shares when staff leave and re-distribute them to new starters. These buy-back arrangements must comply with a number of Company Law provisions, which the Nuttall review concluded were overly burdensome. It recommended the Government simplified these provisions to encourage the further uptake of direct employee ownership. This consultation closes on **November 16** (2012).

In addition, ministers asked Graeme Nuttall to publish a 'one-year on' report on the progress made on delivering his recommendations.

Mr Nuttall, a partner at law firm Field Fisher Waterhouse said: "I am thrilled to see the Government's endorsement of the Nuttall Review. Promoting employee ownership is now clearly and firmly Government policy and will be achieved by raising awareness of employee ownership, increasing the resources available to support its development and reducing the complexity involved.

"All types of employee ownership are encouraged by the Government's action plan. I am pleased to see the consultation on de-regulating and simplifying internal share markets. Changes here will promote further uptake of direct employee ownership. The simple 'off the shelf' templates for setting up an employee owned company are particularly needed to promote the employee trust model. The tool-kit to request a discussion on employee ownership and the moves to raise finance for employee ownership will help make it easier to establish. The co-ordination with the Cabinet Office's public sector mutualisation programme will amplify the effect of these measures.

"There is much in the action plan that will raise awareness, and assessing the viability of an independent Institute, to raise awareness of employee ownership, is also an important step forward. I look forward to heading up this initiative.

"Employee ownership has been proven to work in businesses of all sizes, in all sectors and at whatever stage of the business life cycle. It delivers business performance alongside employee well-being - a powerful, winning combination. Employee ownership is not a special offer available only to employees of a well known department store and supermarket, it is

available throughout the UK and has the potential to unlock growth in the economy.
“I look forward to continuing to work with the Government, the employee ownership sector and the professional bodies who have all got behind this action plan, to drive forward employee ownership into the mainstream of the UK economy.”
Deputy Prime Minister, **Nick Clegg** said: “Businesses that are owned by their employees produce more, grow faster, keep their workforce happier, and pay staff more fairly. Graeme’s report makes clear that sharing ownership means sharing success. Our economy suffered a massive heart attack – now we have to build our strength back up. To pump oxygen back into the system and get Britain working again, it’s got to be out with the old and in with a new more diverse economy that is fairer for all.”
Cabinet Office Minister **Francis Maude** said: “This response is fantastic news; we know that employee ownership can drive higher productivity, efficiency and innovation. That’s why the Cabinet Office is encouraging public sector workers to form employee-owned businesses, setting free their entrepreneurial talents. Since 2010 the number of public service mutuals has increased six-fold. We know that very few want to go back because they now have much more freedom to do their jobs how they know is best.”
BIS added: “Employee ownership refers to the employees of a company having a significant and meaningful stake in their company and, in particular, owning shares that amount to a substantial or controlling stake. Employee ownership can take one of three forms:
*Direct employee ownership – using one or more share plans, employees become individual owners of shares in their company; *indirect employee ownership – shares are held collectively on behalf of employees, normally through a benefit trust; *combined direct and indirect ownership – a combination of individual and collective share ownership.”
In 2009 there were about 200 UK businesses wholly or significantly owned by their employees, with a combined annual turnover of approx £25bn and 110,000 employees. By 2011 this had grown to 250 UK businesses with an annual turnover of approx £30bn and 130,000 employees.
The Treasury is conducting an internal review, being conducted by the Office of Tax Simplification, of the role of employee ownership in supporting growth and options to remove barriers, including tax, to its wider take-up. The review is due to report by Autumn Statement.
Centre member Postlethwaite, the employee share ownership lawyers, commented: “This latest indication of Government support for wider employee ownership is encouraging but seems to be limited to further discussion at this stage. Until we have specific proposals and timetables for implementation, it is difficult to judge whether game-changing action is really on the cards.
“The Nuttall Review identified the obstacles to wider employee ownership and suggested actions to remove them. BIS has now voiced its support - a small step where we now need a giant leap if the Government is to make a significant difference. We also need to see how far the Treasury is prepared to go in removing tax obstacles to employee ownership, when it announces the conclusions of its own review.”
Tax and incentives expert Matthew Findley of Centre member Pinsent Masons said that the new announcements added to the momentum behind the Government’s on-going drive for wider employee share ownership. However, he called on the Government to provide more concrete initiatives than raising awareness and providing guidance.
“If the Government is serious about widening employee ownership it needs to remove a number of the barriers which currently exist, especially amongst SMEs and private companies,” he said. “The policy objectives are laudable but raising awareness and providing guidance will not increase employee ownership alone. The Government will also need to simplify the relevant parts of the tax system if real change is to be effected.”
He added that business would be pleased that the Government was consulting on simpler share buyback rules, allowing them to do so more easily than through the use of an employee benefit trust.

The Nuttall Report can be found at:
http://www.bis.gov.uk/policies/business-law/employee-ownership and the Government’s response at:
http://news.bis.gov.uk/Press-Releases/Action-to-boost-employee-ownership-sector-approved-68273.aspx
The consultation on share buy backs can be found at:
http://www.bis.gov.uk/Consultations/employee-ownership-share-buy-backs-implementation-nuttall%20review-recommendation

Save Our CSOP
UK employee equity plan issuers who participated in a Centre survey are unanimously in favour of retaining the Company Share Option Plan (CSOP), whose long-term future is under review by the Coalition Government.
More than 30 companies, including many famous names, all told the Centre that the Treasury should retain the tax-approved CSOP and several proposed a range of improvements. Some companies replied on the record; others in confidence.
Many suggested raising the £30,000 tax-approved limit, which has not been raised this century and thus cumulative annual inflation has severely eroded its original value.
Several respondents had whole-hearted praise for the CSOP. Typical was this comment: “The CSOP provides a simple, tax-efficient means of incentivising staff and aligning their interests with those of shareholders.” Another said: “CSOP encourages employees to engage with the company, which leads to good retention rates and the sense of being part of something. There should be more tax advantages for

being part of such schemes to help build a more successful company."

Other respondents described the CSOP as "A great motivational tool." Another said: "CSOP is easy to understand for the employee and easy to administer for the employer."

All this backing for the Centre's 'SOS-CSOP' campaign delighted Centre chairman Malcolm Hurlston, who told *Newspad*: "The future of the CSOP is the litmus test for the Coalition's seriousness about employee share ownership. It is the scheme which most effectively brings financial opportunity to part-time and low-paid workers. No amount of transfer of ownership or enterprise incentive can match that."

He launched the survey after the Office of Tax Simplification announced that it wanted firm evidence that the CSOP still deserved a future alongside the other tax-approved all-employee equity plans: namely SAYE-Sharesave, the Share Incentive Plan (SIP) and the Enterprise Management Incentive (EMI) for smaller companies.

A few replies suggested that some companies, though supportive of CSOP, are not quite sure what it is for. For example, one replied: "As unapproved awards are only given to the top 120 employees, the tax-free limit would need to increase to make it worthwhile or attention grabbing for our remco. As we haven't used a CSOP for nine years, there would have to be a period or re-education." This reflects the CSOP's history. It started life as an executive scheme and puzzled even the brilliantly commonsensical Ken Clarke when he was Chancellor.

By contrast, Tullow Oil knows what its CSOP is for, as Richard Taylor explained: "We use our CSOP as an all-employee plan and 200 UK employees currently participate – with grants being made to all UK employees as and when headroom allows. We see the tax advantages the CSOP offers as a significant element in the plan. If the tax relief were to be removed, we would consider this to be a detrimental move, as it would significantly reduce the incentive nature of the plan."

Centre leads for UK in major research study for European Commission

The European Commission has again chosen a group of national partners, including the Centre, which will lead the UK input, to carry out on its behalf a key research project involving the application of employee share ownership to SME businesses throughout the 27 member states. The project, funded by the European Commission, is entitled: *Social Dialogue to Enhance Economic Democracy (S-DEED) in the framework of the 20:20 Strategy and New Skills For New Jobs Agenda.* The Centre and its project partners will investigate: How to link up local communities/municipalities + trade unions + SME employers in business expansion and other work projects - in order to: 1) increase the level of employee 'financial participation' (Eso) in SME companies; 2) gain access to more capital and 3) preserve skilled jobs in local communities. The work will culminate in a two-day conference for 70+ delegates in San Sebastian, in the Spanish Basque country, on **Thursday April 11 and Friday April 12, 2013**.

The Centre has **seven free places** to allocate to representatives of UK trade unions, SME employers, local authority leaders/execs and other stakeholders, for example service providers to the Eso industry. If you are interested in attending this event, as part of the Centre UK group, please contact *newspad* editor Fred Hackworth, or Centre UK director David Poole.

Employee-owned companies take a dip

Employee owned companies under-performed in the second quarter of 2012, dropping nine percent, while the FTSE All-Share was down by only 3.7 percent. However, this was largely due to the initial poor performance of Circle, whose share price had fallen at one point from 195p to 75p in six months. "The UK Employee Ownership Index (EOI) includes a number of niche financial services businesses such as stockbrokers and fund managers (eg Panmure Gordon, Jupiter) whose share prices have been under-performing the FTSE in recent months. But the single worst performer in the first half of 2012 was relatively new entrant Circle, whose share price has fallen from 195p to 75p over the six months (it has since rallied)," said a spokeswoman at the Centre member law firm, Field Fisher Waterhouse. Nevertheless, EOI companies continue to outperform FTSE All-Share companies over the long term by an average of ten percent per year. The EOI is published by the equity incentives team at FFW LLP. It monitors the share price performance of listed companies, comparing the performance of FTSE All-Share companies with companies that are more than ten percent owned by employees. An investment of **£100** in the EOI when the index began in January 1992 would at the end of June 2012 have been worth **£591** whilst the same investment in the FTSE All-Share index would only be worth **£235**. Graeme Nuttall, head of equity incentives at FFW, and the Government's independent adviser on employee ownership, said: "The Employee Ownership index continues to demonstrate that in the long term employee owned companies perform better and continue to be a successful business model. The Government supports employee ownership and is committed to acting on recommendations put forward in the Nuttall Review, which provides a framework to move this model into the economic mainstream."

Pure joy

The Centre is pleased to welcome into membership **Imagination Technologies,** which is a global leader in multimedia and communication technologies. It creates and licenses market-leading IP (intellectual property) cores for graphics and video processing; multi-threaded general and DSP processors, multi-standard communications and connectivity and video voice-over IP and VoLTE solutions. Target markets include mobile phones, handheld multimedia, home electronics and computing. It is the UK's number one for selling digital radios, such as PURE, which is stocked by John Lewis and Amazon. Imagination Technologies, which has close to 1,000 employees, is based at Kings Langley, UK, and has other offices worldwide. See: www.imgtec.com Company secretary Tony Llewellyn attended the Centre's global employee equity conference in Davos earlier this year.

Employee owned Channel ferry faces stormy seas

The OFT is to probe the arrangements underpinning MyFerryLink, the newest Channel ferry operator. The company is a French worker co-op, or SCOP (Societe Co-Operative et Participative) and started operations from Calais to Dover in late August, operating ten daily crossings. It is using the Rodin and the Berlioz, two identical modern passenger ferries taking up to 700 cars and 1,900 passengers each. After 11 months of inactivity post liquidation of Sea-France, the ferries were bought back from the French Government liquidators by Eurotunnel and leased to the newly formed worker co-operative put together by the former employees of Sea-France. However, the decision to allow Eurotunnel to purchase the three former SeaFrance vessels from the liquidator and lease them back to the MyFerryLink co-operative, met fierce criticism from rival operators P&O Ferries and DFDS Seaways. They argued that Eurotunnel has an allegedly unfair share of the already competitive cross-Channel traffic, even though it doesn't operate these ferries. The new workforce of 350 in France and 50 in the UK comprises 98 percent former Sea-France staff. P&O spokesman Brian Rees confirmed that it had been in touch with the OFT: "There is something a little unusual about the biggest player in the market buying the assets of a former competitor. We need reassurance that this isn't going to be unfair competition," he said. Now the OFT is to investigate and put employee ownership at risk.

EBTs: HMRC Settlement Opportunity (2)

Disguised Remuneration (DR) is a wide-ranging anti-avoidance regime, which was introduced by HMRC to prevent the use of EBTs (particularly those with sub-trusts), retirement/pension trusts and other third-party vehicles to benefit employees in a way that avoids or defers income tax and/or NIC. In the future, DR will be HMRC's primary anti-avoidance weapon in dealing with EBTs, said Centre member **Clifford Chance**.

"HMRC remains extremely keen to resolve what it views as the historic abuse of (in particular) EBT sub-trust arrangements, but it has so far failed to successfully challenge the PAYE/NIC aspects of EBT sub-trust arrangements in the courts. Perhaps because of this, HMRC published an 'EBT Settlement Opportunity' during 2011. Employers with EBT arrangements, who were willing to reach a settlement with HMRC, were invited to discuss how this could be achieved," said the Clifford Chance client bulletin *Employee Benefits*. "In broad terms, under the EBT Settlement Opportunity, HMRC will apply PAYE and NIC to the contributions made into the EBT at the rates which applied at the time the contributions were made. Under a 'credit' system, later distributions from the EBT would then generally be exempt from any DR tax charges. However, although there would generally be no penalties, interest would apply. HMRC stated that if it did not receive a response by December 31 2011 then it would be assumed that the employer in question was not interested and HMRC would then 'look to progress enquiries formally.'

"However, it seems that most employers were not too impressed with the EBT Settlement Opportunity, not least because the addition of interest meant that the effective rate of tax could be increased to at least 50 percent and possibly more. The lack of any significant take-up of the EBT Settlement Opportunity, together with the number of technical points that were originally unclear, has resulted in the publication by HMRC of a "Frequently Asked Questions" document (FAQs). The FAQs seek to clarify HMRC's view on a number of important issues. The fact that the FAQs have been published makes it clear that despite HMRC's original December 31 2011 'deadline,' it remains willing (and indeed keen) to enter into settlement discussions with employers.

"Not all of the clarifications set out in the FAQs are good news for employers/employees. For example, HMRC has confirmed that it is determined to impose trust-based IHT charges in certain circumstances. (This seems to be based on the somewhat contradictory analysis that on the one hand the EBT can be 'looked through' to the employee in order to apply PAYE and NIC when contributions were made into the EBT, whilst on the other hand, the formal trust structure is respected in order to apply IHT charges.) The FAQs include commentary on, amongst other things, how the DR 'credit' will work in respect of EBT contributions made in 'out of date' years (i.e. years in respect of which HMRC is out of time to assess to PAYE/NIC).

"Overall, although the FAQs are helpful in clarifying HMRC's view about particular aspects of the EBT Settlement Opportunity, it remains far from certain whether the opportunity will appeal to many employers. It may be the case that some companies will only assess (or re-assess) the pros and cons of the EBT Settlement Opportunity once the outcome of the long running and highly publicised Glasgow Rangers soccer club EBT sub-trust tax case is known. The Rangers judgment is expected to be released shortly," added Clifford Chance.

Another Centre member, **Pett, Franklin & Co.** questioned the conceptual basis of HMRC's stance on the issue. It said: "Many companies have established arrangements for funding the payment of deferred benefits through employees' trusts. Whilst this type of planning has been largely brought to an end by the introduction of the 'Disguised Remuneration' rules, HMRC is actively challenging arrangements made *before* the new rules came into effect, on the basis that transfers or appointments of funds into a sub-trust should properly be taxed as payments of earnings.

Employer companies are being invited to settle with HMRC on this basis. In www.pettfranklin.com/pdfs/EBTs_settlement_opportunity_basis_for_seeking_settlment_2012-09.pdf, Pett, Franklin & Co. LLP examine if HMRC is correct in seeking to agree settlement on this basis and whether, with reference to recent decisions of the court and tribunals, HMRC would, if it were to follow through on its threat of litigation, be likely to succeed in upholding this assertion. Clearly, the tax position will, in each case, be dependent upon the facts."

On the Move

Anne Croft has left **Linklaters**, where for many years she was a senior lawyer in the employee and incentives division and expert in employee share schemes. Centre chairman Malcolm Hurlston paid tribute to Anne's work for the Centre steering committee in recent years. She can be contacted at: Croft.anne@gmail.com Tel 0207 582 7280.

Centre member **Gannons** celebrates its tenth anniversary as a specialist employee benefits legal business this month. **Catherine Gannon** set up as a sole practitioner and has grown the business to that of a five-partner firm. "At the beginning, we had an office in north London for a year but moved the practice to London about eight years ago," said Catherine. "We have taken on a greater space in Holborn, where we have been for many years - at 20-21 Jockey's Fields, London WC1R 4BW. Gannons remains committed to delivery share plans and advice to the smaller SME sector and remains a rarity in a market predominately serviced by the top five outfits," she added. Contact: Catherine Gannon, managing partner; direct dial + 44 (0) 207 438 1062

The **Share Plan Lawyers' Group** held its recent biennial dinner at the Worshipful Company of Cutlers, Cutlers' Hall, in the City.

Mr Mutual

Minister for the Cabinet Office, Francis Maude, announced the appointment of Graeme Nuttall, partner at law firm **Field Fisher Waterhouse**, as a 'Mutuals Ambassador' as part of the Government's Mutuals Ambassadors Programme. Mr Nuttall and 14 others will give both fledgling and existing mutuals a vital helping hand in the months ahead. The 'ambassadors' will work free of charge to drive forward the public service mutuals movement. This will include troubleshooting specific concerns, sharing their commercial expertise, promoting public service mutuals and identifying potential new projects. The Government has selected people local authorities, mutuals, professional services and business firms, to deliver effective support. All the individuals are leaders in their fields. They include Andrew Burnell, ceo of City Healthcare Partnership, a public service mutual with 1,400 staff and a turnover of around £52m and Patrick Lewis, md of Partnership Services, part of the John Lewis Partnership.

Earlier this year, Graeme was appointed as the Government's independent adviser on employee ownership. Last July he launched his final report on employee ownership, which provided recommendations on how to promote employee ownership and spread the benefits into the wider economy (*see front page story*). He said: "I am delighted to accept this appointment and am looking forward to driving forward employee ownership and its move into the mainstream of the economy. The benefits of employee ownership are huge and clearly demonstrated by the many UK success stories. It is time for the wider business community to appreciate what employee ownership can do for business, in both the public and private sector and for the growth of the UK economy." Mr Maude said: "The independent Mutuals Taskforce recommended in its report that we should coordinate a network of mutuals ambassadors and we have done just that. They will play a key role in finding solutions to overcome barriers to upcoming and existing mutuals. There are thousands of frontline staff who know how the services they deliver can be run better and the extra support we have announced will help them to get there."

EVENTS

Awards Dinner November 6

A record 110 Centre members and their guests will hear new employee share ownership minister **Jo Swinson MP** address them before presenting the *Best Employee Share Ownership 2012* award to the winner at the fourth annual black-tie Awards Dinner at the Oriental Club, in London's west end. Ms Swinson, a Lib-Dem MP, whose job title is Under-Secretary of State for Employment Relations, Consumer and Postal Affairs, was promoted in the recent government reshuffle. There is still time for a Centre member to **sponsor** the sell-out reception and dinner for £2,500. As sponsor you would receive thanks for your support with your company logo published in newspad, newsbrief, on the website and on the pre-dinner confirmation email to guests. On the night your logo would appear alongside that of the Centre on the seating plan and menus and Malcolm would thank you for your support during his speech. In addition, after the event you would be able to provide a dedicated quote for the Centre Awards media release and receive the guest list. Contact UK Director David Poole asap if you'd like to be the official Centre Awards Dinner sponsor.

Guernsey December 7

The Centre's annual joint employee share schemes conference, held in partnership with the Guernsey branch of the Society of Trust & Estate Practitioners (STEP), takes place in the Duke of Richmond Hotel, St Peter Port, on **Friday, December 7**. Entitled: ***'A New Start for Employee Benefit Trusts?'*** this event will be opened by Centre Chairman **Malcolm Hurlston** and will include the participation of a representative of the Government department for Business, Innovation and Skills (BIS) More than 30 people have already registered.

From the programme: delegates will learn how to ensure their EBT has government support, reflect on the best way to cope with underwater options and share price volatility, and will be updated on the most recent legal cases affecting day-to-day decisions as a trustee.

Changes introduced by the disguised remuneration legislation have shaken up the trustee world and still present a major challenge to practitioners and their clients. However, the government's endorsement of employee ownership looks like good news for EBTs long-term. The Nuttall review supports the shares-in-trust model enshrined by EBTs and this should spark a wave of new business for Guernsey trustees. Expert speakers will offer trustee delegates the latest regulatory and legislative updates and showcase by example best practice models for employee share ownership.

The speaker line up is: **Graeme Nuttall**, Field, Fisher & Waterhouse, independent adviser to the UK government; **Jane Bateman,** Department for Business, Innovation and Skills**; David Pett**, Pett, Franklin & Co.; **George King IV**, RBC Wealth Management; **David Craddock,** David Craddock Consultancy Services**; Paul Malin**, Haines Watts, and **Alison MacKrill**, STEP Guernsey. Tickets cost £295 for Centre and/or STEP members and £425 for non-members. For registrations, contact Tena Prelec at the Centre on 020 7239 4970 or email: tprelec@esopcentre.com

Davos Feb 7 & 8, 2013

Michael Bussa, Tax Partner in the New York office of Ernst & Young, will address delegates on *'Making sense of equity compensation tax traps facing highly mobile employees and their employers'* at the Centre's 14th Global Employee Equity Forum, on **Thursday February 7 and Friday February 8** at the five-star Steigenberger Belvedere Hotel, in Davos Platz. Another star attraction will be the plan case study to be presented by new Centre member **Imagination Technologies.** Ceo Tony Llewellyn and his new assistant company secretary Lauren Brown will be the co-speakers.

Centre members **Appleby Global** and **RBC Corporate Employee & Executive Services** are co-sponsors of the Davos conference e-brochure.

Appleby Global is a leading provider of offshore legal, fiduciary and administration services.

Contact: Patrick Jones, partner, Appleby Trust (Jersey) Ltd. Tel: +44 (0) 1534 818390

RBC Corporate Employee and Executive Services (RBC cees) provides employee benefit plan and fund administration services to companies worldwide. Contact: Kevin Lim, associate director, Tel: + 44 (0) 20 7002 2420.

The Davos E-brochure, which contains the full programme, can be accessed on the Centre's website ('events'). The other speakers include: **Malcolm Hurlston** Chairman, Esop Centre; **Arne Peder Blix**, President & ceo, Accurate Equity; **Alasdair Friend,** Associate, Baker & McKenzie LLP; **Justin Cooper**, chief operating officer, Capita Registrars; **Fred Whittlesey**, Principal Consultant, Compensation Venture Group Inc; **Martyn Drake,** Director, Computershare; **Mike Pewton,** ceo, GlobalSharePlans; **Jeremy Mindell**, Senior Reward & Tax Manager, Henderson Global Investors; **Mike Landon**, Executive Compensation Director, MM&K; **David Pett**, partner, Pett, Franklin & Co. LLP and **Alan Judes**, MD, Strategic Remuneration. **Solium Capital (UK)** will deliver a presentation too. **Peter Mossop,** Director of Executive Incentives**,** Sanne Group**,** will chair the trustee panel on topical issues and the Q & A session. Thirty-five people have already registered for this event.

Delegate fees for our two nights accommodation in the Belvedere Hotel (on half-board basis) + conference + cocktail party package deal are: Centre member practitioners (service providers) **£905** and no VAT**;** Eso plan issuer members **£535.** Equivalent delegate rates for **non-members** are **£1,425** for practitioners and **£665** for plan issuers. Please email your Davos delegate registrations to fhackworth@hurlstons.com with copy to esop@esopcentre.com

COMPANIES

The new ceo of pharmaceutical giant **AstraZeneca** will receive a base annual salary of £1.1m, which is £100,000 more than his predecessor. Pascal Soriot's annual bonus could add another £1.1m, depending on how the company performs, and hitting long-term targets could see him handed a further £2.75m. In addition, he will get shares worth £4m to compensate for losing out on long-term bonus schemes at his previous employer, **Roche Holding**.

Previous ceo David Brennan stood down in June after the firm, which employs more than 6,000 at sites in Macclesfield and Alderley Park, Cheshire, announced a 38 per cent drop in first-quarter profits. He was paid a base salary of £997,223 in 2011 and, including bonuses and other payments, received a total £3.37m for the year.

Less than a month after Yellow Pages publisher **Hibu** warned that its stock could be worthless, its bosses have scrapped their share-based bonus scheme for one that will pay out cash instead. The company, which has been crippled by the rapid rise of internet search engines such as Google, said that attempts to restructure its £2.2bn debt pile could leave the stock with little or no value**."** However, ceo Mike Pocock and cfo Tony Bates have signed up to new bonus schemes to ensure that they still get paid. A regulatory filing disclosed that Mr Pocock surrendered more than 3.3m shares in the company, while Mr Bates gave up more than 2.2m and accepted a deferred cash and incentive plan instead. The company would not disclose the size of their maximum pay-out under the new, cash-based bonus scheme, but it will be linked to their ability to grow the company's digital revenues and restructure its debt. The announcement came less than two weeks after Hibu took a significant step towards sealing an agreement with its lenders. The change to Hibu's bonus scheme marks the second alteration to the pay-outs for the failing company's directors in recent months. Its last annual report revealed a change in the terms of their remuneration packages, so that they are guaranteed larger salaries and they are less reliant on the company's performance.

Channel Islands FATCA negotiations
The governments of Guernsey, the Isle of Man and Jersey announced their intention to negotiate partnership agreements with the USA to implement the US Foreign Account Tax Compliance Act (FATCA). These agreements will follow the model published by the US Government on July 26 this year and will be similar to the agreement between the UK and the USA which was signed on September 12 2012.

Executive reward reports warning
Changes to executive pay reports, which could see companies set out what directors have earned over a given year as a headline figure, could lead to confusion, a Centre member law firm claimed. Share plans and incentives expert Matthew Findley of **Pinsent Masons** said that the supplied figure may be misunderstood by shareholders and cause conflict rather than aid transparency, particularly when more complex arrangements are involved. He was speaking at the end of a Government consultation period on the changes.
"Directors' remuneration packages are designed to pay out for performance over the longer term," he explained. "That inevitably means that in a bad financial year a director may be getting rewarded for the value they had added over previous years. However, there is a risk that stakeholders will focus on one single figure and ignore the components of the pay package - which tell a truer story and should more clearly highlight the link between pay and performance."
The proposed changes will require companies to enter into 'significant dialogue' with shareholders to avoid misunderstandings, he added. Further changes, to be introduced as part of the Enterprise and Regulatory Reform Bill, will require shareholders to conduct binding votes on executive pay policy – including exit payments made to dismissed directors – at least once every three years.
The draft regulations are intended to streamline the information companies must disclose and clarify the link between pay and performance. Under the new regime businesses will have to:

- Publish the criteria that guide their pay policies, including factors taken into account when deciding on those rules
- Explain how those policies have been followed on an annual basis.
- Set out details of actual payments made by the company to directors during the year - including bonuses, long-term incentives and pension provision – as a single figure.
- Include information on how well the company performed that year and what impact, if any, its performance had on pay.

In addition, it will specifically compare the ceo's pay to company performance, and provide details on how shareholders voted on pay the previous year and any action the company took in response.
The changes are intended to come into effect from October 2013, alongside the changes in the law which will introduce a binding shareholder vote on the pay policy report. The BIS consultation proposals, if enacted, would give shareholders a binding vote on salary and bonus arrangements every three years; compel organisations to show executive reward as a single figure; produce an annual statement on whether performance targets have been met and set out an approach to directors' exit payments as part of their pay policy
Andrew Page, partner at executive reward consultants **New Bridge Street**, said there were two main areas of focus for shareholders from the consultation: to get a better handle on the rationale and process around bonuses, and to get a better sense of exit payments.
"The real impact on companies will come from how shareholders use their new powers," he said. "If they seek a lot of detail and specifics, it will restrain companies' room for manoeuvre, but if shareholders are willing to work more with a default of trust, it will all work as it is intended to. All the signals we are getting from investors is that they will go into it with a constructive attitude, with the default of trust, but if they feel the company is stepping out of line, they can bring it back in," added Mr Page.
Mr Findley (**Pinsent Masons**) said that although the Government had outlined the framework within which a company should formulate its policy, it would be the job of companies and their shareholders to flesh out the detail. This could, he explained, lead to tension between companies' desire to implement a more flexible policy to reflect the commercial needs of the business and the shareholders' need for clarity on how directors would be paid.
"The binding nature of the shareholder vote on pay policy means that voting the policy down is the nuclear option," he said. "Shareholders may be cautious about using it for this reason and because they do not want to micro-manage companies - they will nevertheless want the businesses they invest in to know that they carry a big stick. UK businesses already have a good record on transparency, but now the additional reporting requirements mean that they face a big challenge to adapt their reporting systems for the new regime." The proposals would, he added, make businesses think twice about exit payments to departing directors, particularly as those payments would have to be in line with the shareholder-approved remuneration policy.
"The challenge for businesses is to propose a policy

that is broad and flexible enough to deal with all types of exit situation," he explained. "The new rules could make it difficult for businesses to construct suitable exit payments. Businesses already have to report how much they've spent on exit payments, but the proposals mean they will have to reveal much more information about the actual calculation and structure of such payments. Businesses may have their discretionary powers severely constrained too."

Banks should pay bonuses on retirement as a way to curb short-term risk-taking, a senior member of the **Bank of England** told members of the *Occupy* movement. Andrew Haldane, BoE executive director for financial stability, said that the bonus culture was a "deeply rooted problem of short-termism in modern capital markets" and that the best way to solve this was to ensure that staff interest were aligned with those of investors and customers. "How to lean against these incentives?" Mr. Haldane said in a text of his speech. "Altering the time horizon for pay would be a good starting point. For example, some banks now use a remuneration model based on deferral until retirement. "It would be fantastic if that caught on," he said. Swedish bank **Handelsbanken** operates a system whereby a part of the group's profits are held in shares and only distributed to staff when they turn 60 years old.

Several banks, including **Barclays** are reviewing their pay practices to ensure staff are motivated over the longer term and focus on customer service. Barclays is to cut the salaries of some of its leading investment bankers by as much as half in a bid to reduce costs and show that the bank has fundamentally changed following the financial crisis. The bank – working to rebuild its reputation after the exit of ceo Bob Diamond and chairman Marcus Agius following the Libor scandal - will undertake the drastic measure after a series of reviews into the future of its investment banking arm. *The Sunday Telegraph* said that investment bankers who earn a base salary of between £500,000 and £3m will see their salaries cut by between 30 percent and 40 percent. In certain cases, salaries will be cut by as much as half. The reductions – still to be finalised by senior management within the division – will be drafted in at the start of next year. The salary initiative has been discussed with leading investors, one of whom has spoken to a senior member of Barclays' board in recent weeks. The director told him that the bank was aware some senior bankers would leave as a result, but took the view 'so be it.'

No clawback in sight

Based on the absence of filings with the Securities and Exchange Commission, no senior executive in the US has had to return compensation that has already been paid out as a result of excessively risky investments, violations of ethics codes, or behaviour that regulators judged to be illegal, said *Bloomberg.* The provisions for recouping pay were mandated by the Dodd- Frank Act, though the SEC has yet to carry out this part of the law. Many US companies have voluntarily adopted them, though most apply only in the event of a financial restatement. The best of the clawback provisions require pay to be returned even if the executive wasn't directly responsible for the accounting fraud that led to a re-statement. In the same way, incentive pay should be returned if it was earned by senior managers who were in their jobs when negligent risk-taking, money laundering or rate manipulation occurred. "This should be the case whether they knew about the behaviour or not. Ultimate responsibility for wrongdoing of this magnitude lies at the top of an organization, both in the executive suite and on the board. Even without direct complicity, the actions occurred due to a lack of oversight," added *Bloomberg*.

Bonus Corner

Centaur Media's top two executives were paid bonuses last year despite the company missing key financial targets and making 20 percent of its staff redundant. Geoff Wilmot, ceo, and fd Mark Kerswell were paid cash bonuses for their work in the year to the end of June, despite the company's remuneration committee admitting that they had failed to hit its key financial target. Wilmot received total remuneration of £363,321 for the year to the end of June, including a 2.5 percent increase in base salary, as one fifth of its payroll was cut, bringing headcount down 119 to 507. Centaur's remuneration committee paid him a £20,000 cash bonus; Kerswell received the same as part of £261,515 in total remuneration, despite failing to hit financial targets. "The annual bonus scheme for the executive directors is based on demanding but motivational performance targets that have usually been linked to one of the group's key profit measures, namely adjusted profit before taxation (PBT)," said Colin Morrison, head of the remuneration committee. "While 2012 [adjusted] PBT targets were not met and therefore no bonus in this regard was paid, the remuneration committee awarded bonuses of £20,000 to each of the executive directors in recognition of their contribution to the achievement of the business's strategic objectives in 2012."

Money taps turned back on

Total remuneration being paid to UK chief executives of FTSE 100 companies has risen by a median seven per cent this year, revealed the annual survey* by Centre member **MM&K** and Manifest. After a slowdown last year, average total remuneration *received* by the top ceos has bounded during 2012 to £4.2m, while total remuneration *awarded* (which includes deferred bonuses etc) reached £4.8m, though their bases salary increases were much more modest – typically just over three per cent, reported the survey, based on latest company annual reports.

In their commentary, the authors had some harsh words to say about the steady uncoupling of senior executive reward levels from tested performance indicators, such as Total Shareholder Return (TSR). MM&K and Manifest looked at the average remuneration of FTSE

100 ceos and movements of the FTSE 100 index over the past ten years and said they had found "little relationship" between the two. "The ten year graph of ceo remuneration and TSR required by Vince Cable's and BIS' new proposals is going to mean lots of head scratching in most FTSE 100 remuneration committees. They will have to try to explain why they decided what they did in past years. It is those decisions, which resulted in these figures that are arising now," warned MM&K/Manifest. One of the ways in which top executive reward could be hauled back into kilter was that companies and investors had to learn how to communicate better with each other: "The Stewardship and Governance Codes are emphatic on this approach but the evidence shows that there have still been too many failures to communicate and really understand what is being said," said the report.

"Remuneration committees need to better understand that continuing the upward ratchet of pay without improvements in performance is not acceptable – it never was really but investors who couldn't be bothered to do the leg work were actually part of the problem. Despite the increased focus on better stewardship, the majority of investors are not walking the talk. Governance is often seen as a compliance cost rather than as an investment in better company and market wide performance. Voting and engagement has therefore become too generic and rule-bound – this is the worst of all possible approaches. The PRP model (pay-reward-performance) has not been understood; we believe that a more integrated, investment-focused approach to pay monitoring should be the central plank of stewardship," MM&K/Manifest said.

"Waiting until pay has reached the outrage high water mark is a poor substitute for rigorous analysis by shareholders who are also willing to engage and vote to head off future damage."

Remuneration Committee chairs do not want hostile shareholder feedback and shareholders do not enjoy going into battle every spring.

"We believe that the focus for all should be on justifiable, sustainable remuneration and reward design. Advice and support, which is independent, objective, expert and professional is therefore crucial for all parties. Critics of consultants, proxy advisers and surveys are shooting the messengers; there is no single agency or element responsible for the current state of directors' remuneration or which can put things right alone."

** The MM&K/Manifest Total Remuneration Survey, which contains detailed latest top executive reward data, can be purchased for £500 at http://www.manifest.co.uk/shop/.*

Almost half of all **Wall Street** revenues are earmarked for compensation, revealed a report by the New York State comptroller. Average compensation in the NY securities industry now stands at $363,000, having risen by an average annual rate of 8.7 percent during the years 2009-11 despite the hard times, it said.

US based ceos of SME companies are optimistic about their compensation prospects for 2013, according to results of a recent poll conducted by the online publication *ExpertCEO*. Most of the optimism for 2013 comes from a belief that bonuses will rise 16 percent, with projected salaries expected to rise seven percent, reported the *Wall Street Journal*. The average 2013 salary is $227,000, with an average target bonus of $118,000. Nearly two-thirds of ceos expect to receive bonuses this year and nearly three-quarters expect one next year, after a majority received no bonus in 2011. The average bonus paid in 2011 was $103,000. Ceos expect bonuses to total $102,000 this year, jumping to an expected $118,000 next year.

Ken Ross, founder of *ExpertCEO*, said that the increased optimism is probably due to increased demand by venture-capital-funded companies for scarce executive talent, as well as the overall upbeat economic outlook for many companies in the technology sector. His survey polled 171 senior executives, primarily from small to mid-sized businesses, most of them in the technology industry, with average company revenue of about $25m. Respondents were roughly evenly split between venture-capital-backed companies and family-owned companies, with a few public companies and not-for-profit organisations included. Unsurprisingly, ceos at bigger companies expected better pay. Executives at companies with less than $1m in revenue expected to receive on average $219,000 next year, while those from companies making $1m to $10m a year expected $303,000; from $10m to $50m expected $479,000, and ceos at companies with revenue greater than $50m expected average total compensation of $534,000. Ceos of venture-backed companies, who made up roughly half the survey participants, mirrored the optimism of their non-VC-backed counterparts, expecting to receive $348,000 next year. Small-company ceos (less than $1m in revenue) expected total compensation of $234,000, while the six ceos polled at venture-backed companies with more than $50m in revenue expected average total compensation of $586,000

INTERNATIONAL

Australia

Trouble erupted at Australia's National Broadcast Network (NBN) after the disclosure that it spends 25 times more on salaries for its employees than it earned last year from sales for broadband to customers. Some executives have recently earned up to £387,000 in bonuses. Ceo Mike Quigley said he would forfeit his annual bonus as he had "philosophical problems" with the idea that bonuses make you work harder. The NBN is Australia's most expensive capital project, as projected costs balloon to £24bn.

Eso smoke and mirrors in Zimbabwe

Shareholders of BAT Zimbabwe at an EGM approved unanimously a board plan to allot a 20 percent stake in the company to employees and the community, reported Kumbirai Makwembere in the *Zimbabwe Independent* This was part of its plan to comply with the country's empowerment laws in which companies in the manufacturing sector are expected to allocate 26 percent of their shareholding to locals by the end of October 2012; then raise it to 36 percent by October 2013; up to 46 percent by October 2014 and finally to 51 percent by October 2015. BAT will allot shares to the Employee Share Ownership Trust (ESOT) and the Corporate Social Investment Trust (CSIT) in order to comply with the first indigenisation threshold of 26 percent - as only six percent of its issued share capital was in the hands of locals before the EGM. Of the new shares, five percent will go to the ESOT while the remainder will be for the CSIT. The parent company, BAT International, which holds 57 percent of the company's equity, will donate five percent of its shareholding to employees and this will ensure they hold a ten percent stake post the transaction. The company has disclosed that both beneficiaries from the ESOT and Community Share Ownership Trusts (CSOT) will subscribe for the shares at prevailing market prices.

"Though the company has made an effort to issue the shares on commercial terms by compelling beneficiaries to subscribe for the shares at market prices, the financial assistance being offered makes the whole transaction appear like a donation," wrote Makwembere. "BAT is offering beneficiaries loans at eight percent, for an indefinite duration, with no fixed repayment terms, when the average cost of funding in the Zimbabwean economy is around 15 percent. Furthermore, if the loan has an indefinite duration and no fixed repayment terms, what will motivate the beneficiaries to repay the loans? Effectively the company will foot the cost of the shares that will benefit employees and the investment trust, and this will put a strain on the company's financial performance. It will be interesting to see who the beneficiaries of the CSIT are, considering the new crop of tobacco farmers in the country. "Will the new shareholders make any meaningful contribution to the company?" he added. "The net effect is going to be dilution on the part of the existing shareholders. Compliance with the first 26 percent will result in existing shareholders being diluted by almost 19 percent. In the coming year, locals are expected to have at least 36 percent of the equity. Depending on the approach the company takes, existing shareholders are likely to be short-changed further. Unless the company comes up with an improved plan, by the time the shareholding of locals reaches 51 percent, current shareholders will have been prejudiced severely," claimed Makwembere.

Mining companies have been at the forefront of the indigenisation share ownership movement and examples include Zimplats, Mimosa and Unki. These corporates have awarded employees a ten percent stake in their businesses and further donated US$10m to the 'community.'

"Perhaps the equity approach is not the best way to indigenise firms," added Makwembere. Companies should at least strike a balance between the need to transfer ownership to locals and the business continuity. It is important for a company to have value-adding shareholders at all times. Almost all companies are in need of funding, so the best approach towards indigenisation will be to estimate these capital requirements and offer shares to locals in return for capital. *Free lunches do not work, neither do they benefit the company nor existing shareholders*," he added.

Poets' corner:

William Franklin of Pett, Franklin & Co. Ltd told *newspad*: "My secretary, Jennie Kitching, is a Black Country poet and on October 3 was called at about 5pm by the BBC after getting back home and asked to prepare a poem with a share scheme/financial theme to be broadcast the following morning during the Radio Five 05.30am programme "*Wake Up to Money*" as it was National Poetry Day. It sounded like a hoax to me but it wasn't and in an amazingly short period of time on such an unpromising subject for poetry she produced the following verse in the wake of Ed Miliband's 'One Nation' speech earlier in that week.

'One Nation'

Will our 14 year olds be good as gold, playing their
financial instruments?
Will they be inventive with incentives or sense the
cessation of our 'One Nation'?
Will they be procuring the pecuniary within an
economical economy and will their employers have
a scheme to let them 'live the dream' and be profit-
sharing keen?
... breathing harmony and cooperation into the
heart of our "One Nation"?
where our lawyers and accountants come together,
moving mountains
in multi-disciplinary deliberation of disguised
remuneration
handling income tax and NICs, together with
HMRC,
making each and every employee an owner of their
company
Will it be profit-sharing, management caring, ego
snaring, burden bearing, be owner managed or
taxation ravaged? Our future. ... dis-integration ...
So, will your 14 year old watch their future grow –
or sit in the corner as an MLG pro?

"For the uninitiated, 'MLG pro' refers to being a 'Major League Gamer' professional (a term used often by our 14 year olds!)," added William.

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