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it's our business

newspad of the Employee Share Ownership Centre

Posties have to wait until next spring to get all their free shares

The Royal Mail post privatisation share price rise has been so great that postal service employees cannot receive their full free share allocation until next year, *newspad* can reveal.

Using Whitehall calculations based on a maximum share price offer of 330p per share, the 150,000 eligible full-time employees were due to receive immediately around 725 free shares each and part-timers a smaller number of shares on a pro-rata basis.

However, such was the surge in the share price once normal market trading began - from 330p to an average 540p per share within a few days - that ministerial assumptions on the timing of the promised ten percent employee equity share out had to be redrawn.

This is because employee participants in the tax approved Share Incentive Plan (SIP)– which is the umbrella share scheme being used by the postal workers as a home for their free shares – allows only a maximum investment of £3000 worth of free employee shares per year. The huge leap in the Royal Mail share price put the value of postal workers' free shares almost £1,000 above the annual limit.

"With the SIP valuation taking place at the close of play on the first day of trading, the sharp rise in share price resulted in the share award exceeding the £3000 annual SIP limit. As a result, a full time employee will receive **613** shares in this tax year and the remainder in the 2014 tax year to maintain the tax-advantaged benefit," explained Royal Mail.

This means that 150,000 postal workers will have to wait until April 7 before they can receive into their individual SIP accounts the delayed balance of their free share allocation - the 'missing' 112 shares each.

Nevertheless, postal employees will hardly be complaining about the much-enhanced value of their free share allocations.

Nor will the 15,000 RM employees – one in ten – who applied for the priority offer to purchase at least £500 worth of additional shares – i.e. 151 extra shares each at the offer price – putting at least 3m more shares in employee hands. Their requests to buy a minimum of £500 worth of RM shares, up to a maximum of £10,000 were met *in full*. The SIP could be used to facilitate this by offering them Partnership Shares.

From the Chairman

It is good to see Bill Gross of Pimco underlining that developed economies work best when inequalities of income are at a minimum. Yet, he points out, the income share of the top 1% has doubled from 10% to 20% since the 1970s and that despite our efforts at esop on both sides of the Atlantic. He concludes that the era of taxing capital at lower rates than labour should now end and that the top 1%, who may like him have worked hard but mainly rode the wave, should welcome it. At our end renewed oomph for all employee plans is an essential; good for employees, good for us all. The full Gross article is here: http://tinyurl.com/nnzskh3

Malcolm Hurlston CBE

However, the 372 employees, who chose to opt out of the free shares award, may be having second thoughts after seeing 99.7 percent of their colleagues receiving such a windfall, albeit on paper for the time being.

Centre member **Equiniti** was appointed to act as Registrar and share plan administrator for Royal Mail following a comprehensive tender process.

"After looking at a number of different structures the government chose a simple, tax efficient SIP free share award as the best vehicle to give employees ten percent of Royal Mail shares," said Equiniti. "It is normal practice that employees have to positively elect to receive free shares. However, following consultation, Royal Mail was able to get HMRC approval for their employees to default in to the plan or actively elect to opt out, resulting in a 99.7 percent take up rate."

The postal workers' shares are held in the plan by the SIP Trustee for the beneficial interest of the individual employee, with full voting rights through the Trustee. The shares must be kept in the plan trust for a minimum of five years, whilst employed by Royal Mail, in order to gain the full tax benefit. Staff are not

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allowed to sell their shares for at least three years. After three years they will be allowed to sell 613 shares and the rest in 2017. People leaving the company within three years of allocation will forfeit their shares unless for a valid reason (e.g. retirement, redundancy, or serious long-term sickness).
Equiniti realised from the outset that it had a huge job on its hands, particularly when dealing with posties who had had no previous experience of shareholding. Equiniti said that in order to support the employee communication programme, it had worked closely with the Royal Mail team to produce a comprehensive suite of information material, delivered in different formats across multiple channels.
Equiniti staged more than 100 roadshow 'clinics' across the UK from Exeter to Inverness and Belfast to Norwich, where 55 members of staff teamed up with Royal Mail HR reps and met more than 4,500 staff, answering more than 8000 questions about the Free share and Employee Priority Offer.
Royal Mail ceo Moya Greene told the BBC she thought the flotation was valued correctly and denied it had been sold off too cheaply. At the time of the share sale, the threatened first national postal strike was still on, though it was later called off after RM senior management agreed to up its 8.6 percent pay rise over three years offer and to work towards a separate postal workers pensions deal, to the dismay of some investors. The CWU union ballot of around 115,000 of its members at Royal Mail and Parcelforce had returned a 4-1 decision on a 63 percent turnout in favour of industrial action, which is linked to the recently completed privatisation of the service.
Many institutional investors, who sought to buy large blocks of Royal Mail shares received none at all, as their part of the offer was more than 20 times over-subscribed. It later emerged, via the 'disclosable stock' provision, that the largest single shareholder institution – the Children's Investment Fund – owned 5.8 percent of the company, while GIC Private, the Singaporean sovereign wealth fund, owned a further 4.1 percent. However, the RM employees, now with well over ten percent (including the extra shares bought by postal employees), formed the largest shareholder block – except the state, which still retains a more than 30 percent stake in the company – though the government may well order a final sell-off of its remaining stake next year.
Impressed by the stunning success of the IPO, ministers were confident that the government could sell taxpayers' remaining 32.7 percent stake in **Lloyds Banking Group** next year too. This will raise the question of whether Lloyds staff should be offered preferential terms to acquire shares in the impending sell-off.
The retail offer was almost seven times over-subscribed, forcing huge scale backs in share allocations. Private investors who applied for between £750 and £10,000 worth of shares received 227 shares, initially worth £749.10 at the 330p float price. Those who applied for more than £10,000 worth of shares received none. Nevertheless, almost 700,000 members of the public were able to buy at least some shares.
The Offer comprised 521.7m existing Ords, excluding over-allotment arrangements, representing 52.2 percent of Royal Mail's share capital on Admission. Total gross Treasury proceeds raised in the offer will be £2bn, assuming exercise in full of the over-allotment option.
The SIP rules are complex, but in summary:

- Up to £3,000 of Free Shares can be allocated to each participant in the SIP. Normally if an employer gives shares to an employee, the 'gift' is treated as income, for tax and NI purposes. If they are given through a SIP however, there is no tax or NI to pay provided the shares are left in the SIP for at least five years.
- If the company allows employees to buy additional shares *through the plan*, they can invest up to ten percent of their salary in Partnership Shares, with a maximum of £1,500 a year. The purchase price is paid out of income before tax and NI contributions, and so participants who buy Partnership Shares make a tax and NI saving.
- Up to £1,500 per year can be reinvested as dividend shares, free of tax and NI
- If the any type of share held in the plan increases in value whist they are in the Plan, the increase is not treated as a capital gain for Capital Gains Tax (CGT) purposes. Once they are withdrawn however, any further growth is treated as a capital gain. The shares can be transferred into an ISA which also shelters capital gains from CGT.
- Free Shares must usually be held in the trust for at least three years but do not get the full tax benefits unless they are held in the trust for at least five years. They can be withdrawn within the three year minimum period if the participant leaves employment, provided the rules of the SIP permit it. The rules may stipulate that employees who leave within the first three years forfeit their shares altogether
- Dividend Shares must be held in the trust for three years, but to get the full tax benefits must be held for five years after the shares which earned the dividend were allocated. As with Free Shares, they can be withdrawn within the three year minimum period if the participant leaves

Equiniti is Lead Sponsor of Centre's Rome conference next June

The Esop Centre is delighted to announce that **Equiniti** is to be the lead sponsor of our 26th annual conference in Rome on Thursday June 5 & Friday June 6 next year.
The Centre will be working with Equiniti in the

months ahead to ensure that this major event will showcase an exciting and interesting programme for service providers and plan issuers alike.
It is expected that the Rome conference agenda will feature 16 speaker slots, of which seven have been allocated already on a provisional basis.
Our conference venue, **Residenza di Ripetta**, is a converted 17th century convent in the heart of Rome, superbly located between the Piazza di Popolo and the world-famous Spanish Steps. This four-star+ hotel features high ceilings adorned with old frescoes, original arches, elegant statues and a large inner courtyard garden with gazebos. The Field of Mars, Palazzo Borghese and Via Corso, Rome's most famous shopping street, are little more than 100 metres from this hotel, which is part of the Royal Demeure Luxury Hotels group.
Phil Ainsley, managing director of Equiniti, Employee Benefit Solutions, said: "We're delighted to be lead sponsor of this international conference which we see as part of our engagement, thought leadership and commitment to the industry. It also reflects our burgeoning global share plan capability and bespoke services to executive reward following our acquisition of Killik Employee Services."
Malcolm Hurlston CBE Centre chairman, added: "The last time we went to Rome Italy wasn't even in the five nations and we were in a small if cheerful hotel near the old stadium. The support of Equinity as a rapidly developing world force and the central location of our hotel will make this an unmissable event."
The Centre has arranged special terms with the Royal Demeure group, allowing delegates to stay on over the weekend in the hotel for the same discounted rates as we are paying for our package deal reserved rooms allocation.
Those members who wish to acquire a speaking slot in Rome should contact Fred Hackworth - fhackworth@hurlstons.com asap to discuss the possibilities.
NB: This event has already attracted considerable interest among members and once we have filled the available slots, no further speaker propositions can be considered.
Equiniti provides award-winning executive, Sharesave & SIP plans and a wide variety of other employee benefits management services. It is the leading share plans administration provider for UK-listed companies and manages the second largest UK Flexible Benefits plan.
Equiniti's clients vary in size, from 30 to more than 300,000 employees and span both FTSE 350 and overseas listed companies.

Awards Dinner

The director-general of the Association of British Insurers **Otto Thoresen** is the guest of honour at the Centre's sixth annual awards black-tie champagne reception and dinner on **Wednesday November 6** at the **RAF Club** in Piccadilly. Otto was ceo of AEGON UK and a member of the group management board of AEGON NV. He has served on the ABI board since 2005, most recently as a deputy chairman and chairman of its life insurance and audit committees. Otto is a fellow of the Faculty of Actuaries and spent two years studying management development at INSEAD in France. He is one of the industry's leading figures advising government and regulators on consumer issues. He is chairman of the Personal Finance Education Group, which is the UK's leading finance education organisation, and a member of the board of *Step Change*, the debt charity founded by our chairman. At the ABI, Otto has instigated a much tougher stance on executive reward, particularly bonus structures and sees employee share ownership as contributing to the concept of 'moral capitalism'
A record attendance at the reception and dinner is certain – more than 125 tickets have been bought. The Centre thanks member **Ogier Corporate Services**, which is a supporting sponsor of this unmissable event.
Tania Bearryman heads Ogier's Performance & Reward Management Team that provides trustee and administration services in Jersey, Guernsey, Dublin, London, Bahrain and the Cayman Islands. The team manages a broad spectrum of share plans including:

- *LTIPs (performance/restricted share plans)*
- *Share option plans*
- *Deferred bonus share plans*
- *Phantom share plans*
- *Share warehousing*
- *Approved UK share incentive plans*

The team works closely with Ogier's legal firm to provide a robust and effective governance structure to its trust clients and this expertise is augmented by its Share Awards System providing online access to participants and company plan coordinators.
T: +44 1534 504000. Website: www.ogier.com
Centre chairman **Malcolm Hurlston CBE** will address diners and then international director **Fred Hackworth** will announce the names of the winners and runners-up for the main categories of awards this year:
***Best all-employee Share Ownership Plan** (for a company with **more than 1,500** employees)
***Best all-employee Share Ownership Plan** (for a company with **fewer than 1,500** employees)
***Best all-employee share plan communications**
***Esop Institute student of the year**

Lobbying Labour for Eso

Centre chairman Malcolm Hurlston CBE is to meet the new Shadow Treasury Economic Secretary, Cathy Jamieson MP later this month to help the Opposition put together a coherent strategy on broad-based employee share ownership before the 2015 General Election. Cathy 's predecessor, Chris Leslie, has been promoted to the Shadow Cabinet.

Malcolm is keen to prevent a future Labour government from falling into the same dead-end as the Coalition, which, in the Centre's view, has over-invested its energy on encouraging majority employee ownership of small privately-held companies, instead of focusing more on broad-based Eso, especially in the thousands of small and medium-sized *quoted* companies. Mr Hurlston told *newspad*: "Oddly enough, the Coalition has taken more interest in alternative employee ownership than in the mainstream which affects many more people to good effect and to great potential. Labour has the opportunity of making employee share ownership relevant to the many."

Share plan news

A.G Barr said that its Share Incentive Plan trust had acquired 7,274 shares from the market and allocated them to employees participating in the plan. Additionally, the directors purchased shares at 515 pence each, and were allocated no cost matching shares through the company's plan.

Supermarket giant **Asda**, owned by Walmart, devotes £5m each year to running its company share schemes. However it believes the plans have had a positive effect on staff retention.

Carpetright said that 676 shares were purchased at 667 pence each under the company's Share Incentive Plan. Individuals who purchased shares included Lord Harris, who holds 3,930,296 shares, equating to 5.81 percent of issued share capital.

Equiniti buys Killik & Co's Employee Services

Centre member **Equiniti Group**, the leading financial and business services outsourcing provider, acquired Centre member **Killik Employee Services**, a key provider of discretionary employee and, specifically, executive share plan administration. The acquisition will expand Equiniti's employee benefit solutions service, enhancing its existing market leading technology platform. This acquisition benefits Equiniti by strengthening its global offering, especially for companies with an international operation; it will also support the growing global share alliance partnership.

John Parker, md, Shareholder Solutions, Equiniti, said: "Equiniti already manages around half of the FTSE 100 companies regarding their share registration needs and has experienced a significant increase in demand to manage companies' employees share plans and related investment business. The acquisition of Killik Employee Services allows us to further extend this offering, especially in the area of executive benefits, where Killik Employee Services is a market leader. This market leading position is the result of a very talented employee base and a sophisticated technology offering and our business will be strengthened as a result of acquiring both."

Martin Osborne-Shaw, md, Equniti Executive, *formerly Killik Employee Services*, said: "Killik Employee Services has gone from strength to strength and has a reputation built on providing excellent service and administration. Managing employee benefit solutions is increasingly technology driven and Equiniti offered us the perfect solution for our clients, both in the UK and internationally. This is an exciting time for both the Employee Services division of Killik & Co and our employees."

CONFERENCES

Davos Feb 6 & 7

Stefan Bort from **Prudential Assurance** promises verbal fireworks during the Davos delegates' open debate, as he plans to air client companies' views on the quality of service suppliers in the industry. Two new presentations have reinforced a top quality programme: New York attorney **Harvey Katz**, who is co-chair of the comp & ben practice of Fox Rothschild and **Jeremy Mindell**, director of tax and share schemes adviser Primondell, will deliver presentations on US executive compensation and new accounting tax problems for share schemes respectively.

This, the Centre's 15th Global Employee Equity Forum will again take place in the five-star Steigenberger Belvedere Hotel in Davos Platz on Thursday February 6 and Friday February 7.

Download the Centre's e-brochure from:
www.esopcentre.com/events/upcoming/

It gives the full programme to date – we have 14 speakers, all experts in their fields, enlisted so far. The 2014 conference e-brochure is sponsored by Centre practitioner members **Bedell Group** and **Appleby Global**.

***Appleby** is one of the world's largest providers of offshore legal, fiduciary and administration services. With over 770 lawyers and professional specialists across the Group, operating from 12 offices around the globe. Appleby advises global public and private companies, financial institutions, and high net worth individuals, working with them and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions. Review the website at: www.applebyglobal.com/ and contact: Patrick Jones, partner, Appleby Trust (Jersey) Ltd. Tel: +44 1534 818390.*

***Bedell** is a leading provider of legal and fiduciary services with more than 300 partners and staff in key financial centres including Jersey, Guernsey, London, Dublin, Geneva, Mauritius, BVI and Singapore. Its offshore law firm, Bedell Cristin, was founded in 1939 and offers comprehensive Channel Islands, Mauritian and BVI legal advice. Its trust company, Bedell Trust, has been providing fiduciary and administration services both offshore and onshore since 1971. Experience and commitment to excellence have earned Bedell a strong client list of world class institutions, corporates, high net worth individuals and intermediaries. Contact: Grant Barbour, Partner,*

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More than 30 people have registered already for Davos 2014. Don't miss out on securing a room in the conference hotel. Only four rooms remain to be filled from our original allocation.
Attendance fees: The conference package comprises: two nights (Feb 5 & 6) accommodation in the Steigenberger Belvedere Hotel (on half-board, single occupancy, basis + entrance to all conference sessions + cocktail party (partners welcome) + coffee break refreshments + bound delegates' handbook: **Delegates** – Centre member practitioners (service providers) **£1150** for the package and non-members pay **£1,495**. Plan issuer delegates pay **£765** and no VAT for the same package. This event is CPD accredited and is worth 11 hours. Email your Davos delegate registrations to fhackworth@hurlstons.com with a copy to esop@esopcentre.com

Guernsey 2013:Employee share schemes and EBTs
The Centre's annual Guernsey seminar, organised in partnership with the local branch of the Society of Trust & Estate Practitioners (STEP-Guernsey), took place in the St Pierre Park Hotel, St Peter Port, on October 11. French air traffic control strike action threatened to delay the arrival of Centre chairman **Malcolm Hurlston CBE** but it was upon another aspect of industrial relations - the Royal Mail (RM) privatisation - that his introduction & welcome message focused. Malcolm noted that fewer than 400 of the 150,000 eligible RM employees had rejected the offer of free shares in the newly privatised company. The Centre was liaising with the Communication Workers' Union (CWU) to ensure that Royal Mail employees were able to participate in both the company's financial success and decision-making processes, he told delegates. To this end, the Centre had proposed that employees' voting rights should be collectivised in an appropriate trust vehicle, making employees the second biggest voting bloc after the government. In addition, the Centre had offered to help train CWU officers in order that they were able to provide the union's members with reliable information and advice about the company's Eso. For all the concerns about the RM privatisation, Malcolm said that the company's new scheme presented a real opportunity to spread the wages of capital. He welcomed PM David Cameron's recent defence of the Channel Islands against the 'tax haven' label. The Centre had long urged the government to pursue a 'British Isles approach', viewing these regulated jurisdictions not as troublesome offshore entities but an integrated part of the wider British economy.
Graham Muir of **Nabarro LLP** gave delegates an overview of the new employee shareholder contract status. Graham joked that it was a policy cobbled together on the train to Manchester for the Tory Party conference last year, while the draft legislation itself seemed to have been cobbled together on the train home. He took delegates through the key provisions covering employment law and the tax benefits associated with the contract status. A common theme to emerge from the employment law details was the extent to which the employee rights sacrifices were more constrained than critics – and Chancellor George Osborne – had indicated. Despite the headline loss of rights against unfair dismissal, for example, employees remain able to pursue a range of unfair dismissal claims – especially where the Equality Act 2010 or health and safety legislation is concerned – under the 'automatically unfair dismissals' provision. Other sacrificed rights were already limited in scope: flexible working and time off for studying and training, for example, are only rights to *request*, and as such can be turned down irrespective of the employee's contract status. Graham concluded by saying that, despite the criticisms surrounding the policy, it was too early to tell whether the new contracts would prove popular. The Centre is taking a cautiously positive view about the potential and will be conducting member polls over the coming months to gauge uptake levels.
Jonathan Fletcher Rogers of **Abbiss Cadres** looked at the Office of Tax Simplification's review of unapproved share schemes, guiding delegates through the technical thicket and focusing in particular on the employee shareholder vehicle (ESV). Jonathan provided an update on the status of the multiple proposed changes. HMRC had already rejected several proposals, including a new definition of readily convertible assets, due to their potential for tax avoidance abuse, while another major proposal – the introduction of the concept of a marketable security – had been deferred due to its potential impact on Restricted Securities legislation. A number of individual changes, such as share for share exchanges and the extension of corporation tax relief following takeovers, had either been accepted or remained under consultation. The proposed ESV fell into the 'deferred' category, but, as Jonathan noted, HMRC was still interested in establishing an alternative to employee benefit trusts. This would take the form of a trust, albeit re-branded as a 'vehicle' to avoid connotations of tax avoidance. HMRC would be publishing its response to the consultation in December, with any changes expected to come into force during the first half of next year. There was no clear timetable for progressing the ESV, but the subject will be a likely agenda item at future Centre / STEP seminars.
Alison MacKrill of **Carey Olsen/STEP Guernsey** gave a summary of the past year's Jersey and Guernsey court cases which impact upon the work of trustees. Alison covered a range of cases relating to disclosure of information, costs, construction, and mistake and rescission. Two disclosure of information cases were particularly relevant to the legal responsibilities of trustees:

- In the case of B v T (Court of Appeal, 11 July 2012) 84A, the court upheld that trustees defending themselves against prosecution are permitted to disclose information relevant to their case even against the wishes of beneficiaries
- In Volaw v Trustcorp [2013], meanwhile, the ruling was that successor trustees are not required to hunt for breaches of duty by their predecessors, but must investigate such claims once notified.
- Alison discussed Trusts (Amendment No. 6) (Jersey) Law 201, a legislative proposal under consideration in the Jersey States Assembly. The amendment would provide a statutory basis for the Hastings-Bass principle (itself based on a UK court case of the same name) and the doctrine of mistake, the purpose being to affirm the relatively flexible regime under which the court can set aside voluntary transactions that have resulted in unintended tax consequences. This was of particular interest to trustees and tax advisers keen to avoid litigation where a beneficiary felt that he had received bad advice. Impetus for the amendment came after the English Court of Appeal cut back the expansive Hastings-Bass principle in Pitt v Holt and Futter v Futter. While decisions in the English court do not affect Jersey case law, the island's Trusts Law Working Group, comprising leading members of the industry, recommended that Jersey's approach to the matter be placed on a statutory footing.

Alison revealed that the Inter-Governmental Agreement between the UK and Guernsey would be signed before the end of the month (as indeed it was).

Paul Malin of **Haines Watts Tax Compliance** examined employee benefit trusts – specifically, how to get out of them. Paul explained the four disclosure facilities – Guernsey, Jersey, Isle of Man and Liechtenstein – before illustrating the issue with two real global examples in which potential tax liabilities above 60 percent had been reduced to less than 25 percent and 45 percent. Paul warned of the dangers inherent in clients adopting a 'wait and see approach', but noted that the decision to use a disclosure facility should not be half-hearted – the best results were achieved when a client engaged with his/her adviser and provided the full relevant information. The three Channel Island disclosure facilities will expire in September 2016, with the Liechtenstein facility expiring in April 2016.

David Craddock of **David Craddock Consultancy Services** ended the seminar with a thought-provoking paper on the role of employee share ownership in market economics. David said that Eso constituted a valuable tool for achieving commonly desired macroeconomic, business and social outcomes. The 'social market economy' – a market economy aligned with a social concern for the wider dispersal of wealth – possessed a well-established, if somewhat fragmented, presence in the academic literature and enjoyed potential cross-party support. David drew on Professor Weitzman's theory that Eso, by facilitating more flexible labour costs, could help to avoid short-term unemployment, while keeping inflation under control. Additionally, Eso could contribute to the wider social goal of a 'wealth-owning democracy' – a phrase adopted by Gordon Brown – and help to achieve business objectives by encouraging employees to adopt the mindset of an owner. David's paper is available to download from our website www.esopcentre.com/guernsey-seminar-2013-report.

Service providers look to TSB

More opportunities for share service providers could emerge as a result of **Lloyds Banking Group** being forced by the European Commission to break itself up into two separate banks – Lloyds and TSB. This was the price demanded by the Commission in 2009 for accepting the £20bn of UK taxpayers' cash pumped into the bank during the 2008 financial crisis. TSB shares will be offered on the stock market probably late next year. Lloyds has been forced to disgorge 631 branches to the newly reformed TSB. Lloyds kept 1300 branches. More than 4.6m Lloyds' customers and about 8,500 staff were transferred to TSB some weeks ago. The Centre is convening a group to consider special treatment for former bank share plan participants below top level, which suffered disproportionately.

Dividend tax relief extension sought

Centre member **David Pett**, partner at **Pett, Franklin & Co**, has contacted both HMRC and the BIS department, pointing out the need for the Government to consider extending the relief from the 'dividend tax treatment' for a company 'buy-back of own shares' (now afforded to sales of employee shareholder shares by employees after they have left employment) to EMI share option shares. David told *newspad*: "Prima facie, this should be a perfectly well-affordable relief which would enable SMEs to allow employees to acquire, and later sell back, shares more easily."

He said in a letter to ministers: "We have had a number of discussions with privately-owned companies since July 4, out of which a pattern is emerging: There are plenty of generous reliefs from income tax on the acquisition of 'own-company' shares by employees (EMIs, CSOPs, 'Shares for Rights', SIPs, SAYE options). However, once employees have acquired shares, absent a sale of the whole of the company, the question arises as to how shares can be re-purchased from an employee who leaves (for whatever reason).

"The recent Companies Act changes allow for the re-purchase of own shares by a private company, but unless the shares have been held for at least five years, the proceeds of sale over and above a return of the subscription price + premium paid will fall to be charged to income tax as a dividend – per s1035 CTA 2010.

"For this reason, the company will normally need to consider the creation and funding of an employees' trust so as to ensure that (subject always to the application of the 'transactions in securities' rules) the gain on sale is taxed as a capital gain – and, if the shares are EMI option shares, with the benefit of Entrepreneurs' Relief. The problem here is that a loan to such a trust will, assuming the company is a 'close company', attract a penal charge under s455 CTA 2010. An *outright contribution* will not qualify for relief from corporation tax (other than under the rules relating to a SIP acquiring at least ten percent).

"The 'shares-for-rights' legislation recognises this dilemma and provides an express exemption from income tax dividend treatment if employee shareholder shares are sold back to the issuing company after the employee has left (however long the shares have been held) – per s385A ITTOIA 2005.

Could the government be persuaded to extend this exemption from income tax dividend treatment to the situation in which EMI share option shares are sold back to the company in which they are held if either (a) the employee has left or (b) the shares have been held for, say, three years?

"This would go a long way to freeing up the ability for closely-held companies to issue, and later buy-back into treasury, shares under EMI options thereby avoiding the costs and hassle associated with establishing an employees' trust (with all the pitfalls and traps - such as the disguised remuneration rules) which that entails for SMEs. I cannot see that the cost to the Treasury would be significant (if there be any) and, if it came out of the £50m earmarked for 'employee ownership', it would be money well spent. The comment has been made on several occasions that, if as a country we wish to emulate the German idea of the 'Mittelstand', we need to have a clear and simple mechanism by which independent private companies can allow managers and employees to benefit from growth in value of shares, by selling back to the company, without pressure for the company to be sold in order to realise the value of shares. - This is not put forward as an alternative to the idea of a 'safe harbour' trust – the merits of which are as strong as ever," he added.

EU Prospectus Directive Eso exemption expansion delayed until 2015

The EU Commission will not make a final determination on the equivalency of non-EU regulated exchanges for purposes of expanding Eso plan exemption under the EU Prospectus Directive in 2014, according to unofficial comments made to **Baker & McKenzie** lawyers by various securities regulators.

The European Securities and Markets Authority (ESMA) internally established a deadline of December 31 2014 to provide technical advice to the Commission on which stock exchanges should qualify as equivalent to an EU-regulated exchange (eg the New York Stock Exchange and NASDAQ). However, the ESMA still has not issued its advice to the Commission, which needs to review and consider such advice prior to making a final determination on equivalency. As a result, those US companies who have delayed equity compensation offerings to employees in Europe with the hope of being able to rely on the expanded employee share plan exemption (for purposes of avoiding the need to prepare and distribute an approved EU prospectus) should expect further delays into 2015. In the interim period, various EU member states continue to implement other amendments to the EU Prospectus Directive (such as the increase in the applicable thresholds for certain exemptions and exclusions from the prospectus filing requirements) that may make previously deferred offerings now possible without triggering the need for an approved EU prospectus.

Belgium implemented the changes to the EU Prospectus Directive on August 16 which is important for companies operating share plans in the EU, according to Centre member **Clifford Chance**. Under the changes to Belgian law, a broader range of companies, including unlisted companies, in the European Economic Area (EEA) - all EU member states (except Croatia), plus Iceland, Liechtenstein and Norway - can take advantage of the employee share plans exemption from needing a prospectus to offer shares to employees. The exemption is now available to certain non-EEA companies with securities admitted to trading on an EEA regulated market or on certain third country exchanges which the European Commission considers as equivalent to an EEA regulated market under Belgian law. However, as the European Commission has yet to adopt the relevant equivalence criteria, this part of the exemption cannot be used in practice.

On the move

Stuart Bailey contacted *newspad* to inform fellow Centre members that **Accurate Equity** is continuing to support UK clients, despite the recent closure of the London office of Accurate Equity UK. Stuart, assisted by ex PwC employee **Sherry Howes**, frequently works in partnership with other service providers. Stuart has ambitions to grow the UK business. He said: "There is strong demand for the types of service for which we are well-known." He is now based at Centaur House, Ancells Business Park, Ancells Road, Fleet, Hampshire. GU51 2UJ Tel: +44 1252 761153
Mobile: +44 7598 268669 stuart@accurateequity.com and website at: www.accurateequity.com

Centre member **Bedell Cristin** has won the '*Offshore Law Firm of the Year*' category in the new Legal 500 UK Awards 2013.

Leslie Moss MBE, former practice leader for UK reward and performance consulting for Aon Hewitt, is now leading the HR consulting business for Gateway Consulting Group. Contact him on +44 7908 223481 or lnmoss@email.com for further information. Gateway Consulting Group is an HR and health policy consultancy.

Gavin St Pier, former Centre steering committee member, is back in the news. Ex trustee accountant and lawyer Gavin is not only a Deputy (MP) in Guernsey, but Minister for Treasury and Resources too. He is seeking changes to the policies followed by Guernsey's air route licensing authority for the Gatwick route. Such changes could protect Guernsey's States-owned airline Aurigny from competition. Last July, the States agreed to act as guarantor to allow Aurigny to buy a new jet for approximately £25m. This was despite concern that Easyjet was considering competing on the route. The commitment by Aurigny to buy a 122-seat Embraer 195 jet in time for next summer followed an announcement by Flybe that it was selling its Gatwick slots to Easyjet and would stop using the route from March. This prompted fears that Aurigny alone would not be able to meet demand for seats, in the event that Easyjet chose not to ply the route. In September, Easyjet applied for a licence to fly between Guernsey and Gatwick and Deputy St Pier wants Aurigny's investment to be taken into account when that application is considered by the Commerce and Employment Department's Air Transport Licensing panel. A spokesman for Easyjet said: "This proposal will be taken into account as we continue to evaluate the potential to operate flights to and from Guernsey."

New members

The centre welcomes into membership Manchester based **Castlefield Investment Partners**, of St George's House, 215-219 Chester Road Manchester M15 4JE. CIP is part of the Castlefield employee-owned group, a family of investment and advisory businesses with a focus on client aspirations. Shared ownership and the fact that its employees and even clients can share in its business and profits, lies at the heart of this company. Its main Centre contact is **David Gorman**, head of research. His email address is : david.gorman@castlefield.com. Castlefield's website is at: www.castlefield.com

Global Shares has rejoined the Centre. Global Shares was founded in 2006 with a passion for equity compensation and a vision to build a great company – one that changes the market with its innovative technology while at the same time delivering exceptional administration services to its customers all over the world. Its European operation is based in West Cork, Ireland, where financial accountant, **Miriam O'Mahony** will act as the Centre's main administrative contact. In order to succeed in such a changeable industry, equity comp professionals need a complete software solution to maximise the potential of their equity plans. The plan needs to be an online, automated process, which synchronises with payroll, HR, tax, accounting and reporting systems. This saves client time and money and importantly reduces the risk of manual errors. Whether clients opt to manage their equity compensation plans in-house or hand it all over to a third party, a successful plan demands excellent communication and a superior participant experience. Global Shares builds the equity automation software that makes this possible. Global Shares offers equity compensation software and administration services to companies all over the world. It is committed to providing world-class independent global employee share plan administration and consulting services to companies around the globe. Contact: **Tim Houstoun**, ceo at: thoustoun@globalshares.com. Global Shares, which has customers in more than 20 countries, offers independent global employee equity plan administration (employee share plan administration) services as well as related consulting services and equity plan administration software and share plan admin software to companies around the globe. Its website is at: www.globalshares.com/

Howells Associates has rejoined the Centre. **Simon Hurley** is our main contact simon.hurley@howells-associates.com and he will be attending the Centre's next international conference - Davos 2014.

The dead are waiting to hear from you….

The Centre awaits a apology from LinkedIn ™ after receiving an invitation from this online business notice board to congratulate **Sarah Pickering**, who was allegedly celebrating her fifth anniversary in post, latterly as md, at tax specialist lawyers Alvarez & Marsal. The Centre sent LinkedIn ™ a reply pointing out that Sarah, formerly a departmental head at **Ernst & Young** and ex-member of the Centre's steering committee, died tragically more than a year ago. *"Sarah died after a cliff fall on Christmas Day 2011 on the Caribbean Island of St Lucia, where she had been living with her newly-wedded husband. LinkedIn ™ should apologise for any distress your mention of her job anniversary today has caused to her friends and relatives - and of course remove her profile, as this is sadly something she is no longer able to do for herself."*

Sarah was a popular Centre member and frequent speaker at our conferences. Her presence is sorely missed by many members. Centre informants say that they too have noticed profiles of other dead people still up on this heavily promoted online site. "What are they planning next, a sub-chapter to enable dead business people to send messages to each other? - It is a serious error by LinkedIn and typical of its impersonal and, some would say, intrusive approach" said one. “The error is compounded by the abject failure to take remedial action. Your life is not safe in their hands.”

Private equity promotes Eso

There is a “clear window of opportunity” between now and next year’s Budget to promote the benefits of employee share ownership, according to the British Private Equity and Venture Association (BVCA). Its director general, Tim Hames, explained that a combination of improving economic conditions, cross-party support and growing employee awareness had nurtured the right conditions for employee share ownership to grow significantly over the following 18 months. The BVCA dg said: “While political parties of all persuasions are keen to foster an entrepreneurial spirit among employees, with the 2015 election fast approaching, their attentions will soon turn towards matters of policy. Between now and next year’s Budget we have a great opportunity with a receptive audience to press home the benefits of increased productivity and greater employee engagement that employee share ownership can bring. We have the arguments. Now is the time to make them heard,” Hames stated. The BVCA said it would be working to ensure employee share ownership retains support within HMRC and the Treasury. In this year’s Budget, the Treasury announced that employers could claim corporation tax deductions when granting staff share awards or options.

Dividing the EO cake

The Treasury consultation on how best to deploy £50m of financial incentives and rewards for firms practising and adopting employee ownership closed on September 26. The consultation followed a review, led by the Treasury, on employee ownership taxation, complementing the earlier Nuttall Review into barriers facing UK employee ownership held in the final months of 2012. The outcome of the Treasury review was encapsulated in paragraph 1.134 of the Budget 2013 Red Book, which announced that: “The Government supports employee ownership as a business model and welcomes work by the Implementation Group on Employee Ownership to take forward the recommendations of the Nuttall Review. In order to further incentivise growth of the sector, the Government is providing £50m annually from 2014-15. This will be used to respond to recommendations from the Nuttall Review and other relevant organisations aiming to encourage employee ownership. In addition, it will be used to fund the introduction of a Capital Gains Tax relief on the sale of a controlling interest in a business into an employee ownership structure. Consultation on this measure will take into account the progress of work by the Department for Business, Innovation and Skills (BIS) and the implementation group to develop an off the shelf employee owned company model, with the intention that the new capital gains tax relief will be introduced in Finance Bill 2014. The Government will look at further incentives in this area, including measures targeted at employees through indirect ownership models.”

Employees on the board?

If employees were allowed to sit on company boards, top executives’ pay would not only be set at more reasonable levels, but the extra diversity would encourage the long-term success of individual firms, as both employees and directors worked together in the best interests of company performance, according to the TUC. It has long argued that corporate governance laws in the UK are missing a trick by preventing employee representatives from sitting on remuneration committees. However, many employers are not so sure and others are overly hostile to the idea.

The TUC published two reports — one looking at the European experience and the other setting out the arguments why the UK should follow a similar path. The UK’s alleged short-term approach — based on a model relying solely on shareholders to hold companies to account — had delivered neither economic success nor social justice, the TUC report argued. Instead, a fixation with short-term gains had led to poor productivity, low investment and wages falling as a share of GDP, it claimed. This, said the report, had had the end result of hitting demand and hurting companies in the long run.

Self-enrolment snapshot

In the first year of a new scheme to get employees saving for retirement, more than 1.6m have already said ‘We’re in.’ From October last year, every UK business had to automatically enrol their workers into a pension plan. The Pensions Minister Steve Webb celebrated the one-year anniversary. Food retail giant Greggs, who feature in the government’s work place pension advertising campaign, said that only 6.5 percent of their staff had opted out. Employers started to enrol their staff and over the next five years up to 11m people will have a chance to save for their retirement - many for the first time. All firms employing someone aged between 22 and state pension age and earning more than £9,440 a year, must enrol their staff into a pension scheme and contribute to it, though employees can choose to opt out if they want.

More Eso could help allay savings crisis

Two recent surveys about the worsening UK retirement savings crisis have revived Centre calls for more government action to help spread all-employee share ownership throughout business and commerce.

Savings levels among those aged 55-64 plummeted during the past year as the cost of living continued to rise, according to **Aviva**'s latest *Real Retirement Report*. Almost £20bn was withdrawn from savings pots in the last year by 55-64s. The autumn 2013 report assesses the impact of financial pressures and concerns across the UK's three ages of retirement: the 55-64s (pre-retirees), 65-74s (retiring) and over-75s (long-term retired). Savings habits among those nearing retirement have tailed off in the last year, leaving 40 percent of 55-64s - over 2.9m according to the latest population estimates - finding no room in their monthly budgets to make regular savings. This figure has grown by two percentage points in the last year, while the typical amount saved each month has also dropped 15 percent from £39 to £33. The trend sets pre-retirees apart from both older age groups, who have succeeded in increasing their monthly savings habits in the last twelve months. The 65-74s are typically saving £14 more each month (£76) than in September 2012 while the over-75s are saving £8 more (£69). Pre-retirees have been rendered even more vulnerable by a 22 percent drop in their average savings pot over the last year to £9,653. The loss of £2,698 in savings per person equates to £19.7bn in total across the whole of the UK. One in five 55-64s - almost 1.5m people - has no savings or investments to fall back on while almost one in three has less than £500 (30 percent).

The latest **Which?** *Quarterly Consumer Report* found that half the UK population were worried about the level of their savings, with one in five dipping into their savings to pay for essentials last month. This figure rose to a quarter of 50-64 year olds - the highest of all age groups - and this group was most likely to use it for food or a household bill. *One in five UK households has no savings at all, leaving people vulnerable to financial shocks.* More than four in ten say they would find it difficult to cope with an unexpected expense and just 26 percent said they were saving for a rainy day or unexpected expense. Which?'s analysis of the **Office for National Statistics**' Living Costs and Food Survey showed that the average household saved £5.20 per week, or £270 per year, but those on the lowest incomes were not saving anything at all, compared to those on the highest incomes saving on average £22 a week. The current very low interest rates were further compounding this savings problem, as there was little incentive for people to save. After the cost of living, savings interest rates are one of the top consumer worries with six in ten people and those about to retire, being especially anxious. Which? director, Richard Lloyd, said: "Our research paints a worrying picture of consumers vulnerable to financial shocks and unable save for retirement, with the rising cost of living forcing them to dip into their savings to pay for essentials like food and bills."

Centre chairman Malcolm Hurlston CBE said: "I shall propose to Richard Lloyd a joint approach to better linkage between employee shareholding and retirement."

Share payment must be taxed - ruling

The First-tier Tribunal dismissed an appeal against an assessment to income tax and national insurance contributions arising on a scheme which involved the payment of shares in place of a cash bonus in order to extract cash from a family company, reported Centre member **Deloitte**. The legislation provides that income tax is not charged when shares related to a person's employment are received, but later when 'chargeable events' (such as the disposal of the shares) occur. The scheme used sought to ensure that the bonus received was in the form of shares subject to this regime and that their value could be obtained without triggering a chargeable event. Interestingly, the appellant argued inter alia that the scheme must work as the General Anti-Abuse Rule (GAAR) had been brought in to counteract such planning. The Tribunal held that the shares received were a vehicle for the payment of cash. See http://deloi.tt/17Dxkgn

Guernsey, Jersey sign tax IGAs with UK

Guernsey and Jersey both signed inter-governmental agreements with the UK on October 22 to improve the automatic exchange of tax information between the jurisdictions.

Chief Minister of Guernsey, Peter Harwood, signed the agreement with the UK's Exchequer Secretary to the Treasury, David Gauke. Mr Harwood said: "These measures are in line with the provisions of the agreement being negotiated with the US regarding FATCA, which we will be signing shortly. The two agreements with the UK and the US have been supported by our industry, being key to a sustainable future for the finance sector and securing our global reputation for tax transparency. When I announced this proposed agreement earlier this year, I emphasised that it was further illustration of Guernsey's commitment to combating tax evasion and the principle of automatic exchange. Our twin IGA approach to US and UK reporting will provide our industry with a very strong platform to compete on the world stage against weaker, less transparent jurisdictions."

The agreement had to be ratified by the States before it came into force, said **Carey Olsen**.

Jersey signed an inter-governmental agreement on automatic exchange of tax information too. The territory's chief minister said: "This agreement once again demonstrates our long-held commitment to international cooperation on tax matters. It sends another clear signal that Jersey has no need or desire to tolerate tax evasion or aggressive tax avoidance. Our relationship with the UK has spanned many centuries and is greatly valued by the people and Government of Jersey. As well as our innumerable cultural, social and

historical ties, the UK is our closest economic partner. "In signing this agreement we are securing this vital relationship while reinforcing our international reputation as a transparent and well-regulated financial services centre." Earlier last month (Oct) the Isle of Man became the first British Crown Dependency to sign an inter-governmental agreement with the UK on automatic tax information exchange.
The intergovernmental agreements (IGAs) are identical, except for Island-specific differences, including that information will be exchanged with the UK's HMRC under amended Tax Information Exchange Agreements (TIEAs) for Guernsey and for Jersey and under an amendment to the existing Double Tax Agreement between the UK and the Isle of Man in the case of the Isle of Man IGA. The UK-Guernsey IGA is modelled on a similar agreement being negotiated with the US relating to compliance with provisions of the Foreign Account Tax Compliance Act (FATCA) brought into law in the US on March 18, 2010. The UK-Guernsey IGA will build on automatic tax information exchange already undertaken between Guernsey and the UK relating to the EU Savings Directive, as implemented in Guernsey through bilateral agreements since 2005. The first set of filings under the IGAs are due in 2016 for the year 2014. Unlike the proposed US-Guernsey IGA, the UK-Guernsey IGA contains details of an alternative reporting regime for UK resident, non-domiciled, remittance-based tax payers. The alternative reporting regime is set out in Annex IV of the UK-Guernsey IGA and, where available, modifies the scope of information reportable and the deadlines for filing that information, in respect of relevant accounts.
One industry insider said: "*We jokingly tell clients that the IRS has deemed the entire tax-paying population of the planet as being guilty of US Tax avoidance, until proven otherwise. The separate investigations and agreements with the Swiss banks, and now the IGA with Jersey & Guernsey only go to prove that it's no longer a joke and certainly not funny. Hopefully the positives for Jersey & Guernsey will be that these agreements now divert attention away from them and onto the next target*"
Lord Flight told *newspad*: "The main point is that the UK Government wants the Crown Dependencies to report all remittances to UK non-doms, where in their UK tax returns non-doms are obliged only to report income remittances. Unless the world gets a move on in requiring FATCA type requirements from Hong Kong, Singapore, etc. there is a real danger of Channel Islands loss of business, particularly to Singapore, not because people are cheating but to avoid all the hassle.

South Africa: Proposed changes to tax treatment of dividends
The South African treasury has published draft legislation that would change the tax treatment of dividends paid on unvested shares awarded under employee share plans, reported **Clifford Chance**. Under the proposed rules, dividends paid on unvested shares would be taxed as employment income in the hands of the employee at an employee's marginal rate (up to 40 percent), rather than being subject to dividend withholding tax at a rate of 15 percent. Companies whose employees participate in employee share plans would be subject to additional income tax withholding obligations. Following public comment on the draft legislation, the South African treasury has indicated that these proposals may be watered down in the final version of the legislation. Update provided by ENS, www.ens.co.za.

Zimbabwe
Shareholders of Meikles Africa, **Pick n Pay**'s Zimbabwean partner in retailer TM Supermarkets, are expected to vote on November 27 for the final disposal of ten percent of the group's shares to an employee share ownership trust in pursuit of the group's full compliance with the country's indigenisation policy. The company's shareholders are convening an extraordinary meeting to finalise a resolution to authorise this move. This is in line with the indigenisation compliance plan. "The Ministry of Youth Development, Indigenisation and Empowerment have approved the Company's provisional Indigenisation Implementation Plan on the condition that ten percent of the issued share capital be issued to the Trust," Meikles company secretary Lane Mitchel said.

The **Autumn Statement** will be on Wednesday December 4, at 12.30. This statement will provide an update on the Government's plans for the economy based on the latest forecasts from the Office for Budget Responsibility, said **Deloitte**.
See http://deloi.tt/16fsEU2.
All the announcements relevant to tax will be online at: http://www.ukbudget.com. Twitter feed: https://twitter.com/UKBudget will include frequent updates. The draft clauses to be included in Finance Bill 2014 will be published on December 10 2013, together with responses to policy consultations, explanatory notes and tax information and impact notes. The consultation on the draft legislation will be open until February 4 next year.

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