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it's our business

newspad of the Employee Share Ownership Centre

Centre helps EESC put esops on EU agenda

The Centre is playing a key role – as lead UK representative body - in the first EU summit on employee share ownership, which takes place in Brussels on October 17-19.
Centre chairman Malcolm Hurlston, international director Fred Hackworth and national director David Poole have all been invited by the European Economic & Social Committee to speak and present evidence during the three-day top-level conference. They will discuss with delegates from all over Europe and the US how to raise both the profile and level of employee financial participation (Eso) throughout the 27 EU member states.
Other speakers include Nobel Literature Prize winner Dario Fo; Prof Jerzy Busak, President of the European Parliament; Lazlo Andor, EU Commissioner for Employment & Social Affairs; Antonio Tajani, EU Commissioner for Industry & Entrepreneurship and Patricia Kelso.
Mr Hurlston will address delegates on the need for trade unions to embrace employee ownership and how relations between the UK trade unions and the employee share ownership seem to be thawing after years of misunderstanding and obstruction. His assessment follows talks he has held recently with senior officials at TUC Congress House.
In addition, the Centre chairman will report on significant moves by the Coalition government to mutualise state sector departments and businesses.
Fred Hackworth will report on the main strands emerging from the UK national workshop, which the Centre held in May, again at the invitation of EESC. He will emphasise the message from workshop delegates that the use of Eso as a business succession tool, especially in the SME sector, ought to be more widely known and encouraged. Hundreds of thousands of EU jobs could be saved if Eso were available to distressed business owners as an alternative to liquidation when trade sales are not an option, it is believed.
Italian and German trade unionists will discuss how the operation of EFP-Eso among car factory workers can improve the quality of corporate governance. Other debates will cover whether financial crisis bailouts create conditions for more public participation in economies and the projected appearance of a European model ESOP.
The EESC project, entitled: *'Promoting EFP in the EU 27 – A piece of the cake,'* is increasing pressure on the EU Commission and Council of Ministers to promote employee share ownership, especially in the SME sector, by a combination of carrot and stick. It follows a report by Alexander, Graf von Schwerin, a German employee representative, and Madi Sharma, UK employer representative on the Council.
Some EESC project leaders suspect that now only an EU Directive, ordering member states to offer better incentives to companies to get them to introduce or expand employee share ownership within their businesses, with fines for non-compliance, would do the trick.
There will be a full report in next month's *newspad*.

From the Chairman

Over the past decade chief executive rewards have gone up by a factor of nearly five; over a similar period the FTSE 100 has sunk four per-cent. So much for the alignment used to justify re-wards.
In the new guidelines there are signs of a tougher ABI. Under new chief Otto Thoresen I surmise in-surers may be ready to put a stop to the plunder of shareholders and pension beneficiaries which has scarred the reward scenario. The new guidelines are less a revision than a fundamentally new ap-proach looking towards real alignment with claw-back and malus. I wonder whether there are any ceos who deserve retrospective reward?

Malcolm Hurlston

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Speakers and staff battle through Guernsey fog to save conference

Thick fog over the Channel Islands threatened the Centre's annual share schemes for trustees conference in Guernsey last month, but delegates were not deprived of their programme.

A shroud of fog descended over Guernsey airport at 1400 hrs on September 8 – the day before the conference - and did not lift for 24 hours, except briefly on Friday morning, allowing just enough time for two of the UK-based Centre speakers to land.

Although three key speakers were left stranded on the UK mainland, adroit manoeuvring by Centre national director, David Poole and others ensured that neither the conference joint hosts, the Guernsey branch of the Society of Trust & Estate Practitioners, nor the delegates were let down.

Centre chairman Malcolm Hurlston, David Pett of Pett, Franklin & Co. LLP and Mahesh Varia of Travers Smith were grounded by the fog, along with a handful of Jersey based delegates.

Malcolm was booked on Air Aurigny and the best they offered him, pointlessly, when his flight was cancelled was a ferry the next day, arriving in Guernsey at 1900 hrs, long after the conference ended.

David Poole was in a FlyBe plane that took off from Gatwick 1400 hrs Thursday and reached Guernsey, but it was too foggy to land, so it then circled for two hours before returning to Gatwick. "All remaining flights to Guernsey on Thursday were then cancelled. It was a nightmare trying to re-arrange new flights," he said.

David Pett deserves the Centre's gold medal for endurance, having spent all Thursday at Exeter airport in a vain attempt to get lift off for Guernsey. He managed to fix another flight on Friday at 7am with FlyBe, but then sat on the tarmac for several hours before being told they wouldn't fly. Somehow, he got back to a phone to do his presentation on air.

David Craddock was holed up in Birmingham Airport, where they weren't going to put on a Friday early morning flight, so he hastened to Gatwick Thursday night to get the early morning flight with the remaining speakers. David Poole, David Craddock and Juliet Halfhead finally got airborne at 0700 hrs Friday, arriving at the hotel ten minutes before the conference was due to start.

Despite the drama, 35 trustees and other employee share scheme professionals gathered at the St Pierre Park Hotel to get to grips with disguised remuneration and other topical share scheme issues on the agenda. David Poole thanked the speakers for having gone to such lengths to try to reach the conference, whether they had finally arrived or not, especially Juliet Halfhead and David Craddock for the extra help on the morning.

Malcolm briefly managed to welcome the delegates via video skype before losing wireless connection. David told *newspad*: " We had the skype link set up for Malcolm and Mahesh, but we had been warned that the more people used the wifi the less reliable it would become, especially for voice and video. We took the risk, but it didn't quite come off in the end. The hotel staff were generally helpful."

David Poole finished the chairman's introduction saying that the Centre fully supported the intended aims of the Finance Act in clamping down on tax avoidance. The drafters were given the task not of finding the needle in the haystack, but rather picking out the straw without disturbing the hay – as the Act had been brought in to tackle arrangements that share many of the features of *bona fide* remuneration schemes. Perhaps the structure we had ended up with was inevitable. By saying everything was caught unless it falls within an exception the Revenue ensured that new products could not be thought up to work round the rules. HMRC were to be congratulated for consulting so widely to ensure that only the intended targets were penalised and it was noted that discussions were still ongoing with Revenue officials.

David Craddock then stepped into the breach to present Mahesh Varia's material on the background to disguised remuneration and the terms used within it. Mahesh had helpfully provided a five-step structure for those approaching the legislation. The first step: is there an arrangement for reward or recognition or loan? Next, is there a relevant step? (This applies to the payment of a sum, transfer of an asset, making an asset available or the much maligned term earmarking.) Is the step by a relevant third person? Does an exclusion apply? Finally, can the charge be reduced?

Juliet Halfhead's presentation on unapproved options gave a more in-depth look at conditions which are required to be in place for the exclusions relating to various types of share schemes to apply. Because we are yet to have real life cases to quote, Juliet pointed out that there are still some areas where uncertainty remains over how HMRC will enforce the legislation in practice. Indeed, with HMRC still altering their position in some cases, Juliet said there was sympathy for companies that had made awards and may now retrospectively fall foul of changes still to be made!

Chairman of our co-hosts STEP Guernsey, Alison MacKrill brought delegates up to date with the complexities of trust law. There had been some important cases recently emanating from Jersey. What do you do if your trustee company dissolves? Appoint a new trustee, one might think, but then you would be in the position of having two trustees – who would be accountable to the beneficiaries. This was the matter considered *In the matter of the representation of BB, A and C in the matter of the D Retirement Benefit Trust* [2011] JRC148. *In the matter of the Y Trust* [2011] JLR135 the trustees asked for the court's blessing to

reverse a decision that they had told a beneficiary they would make. The judge held that trustees cannot fetter future exercise of discretion and can go back on decisions even if they have led beneficiaries to believe they will act in a certain way. The Court did criticise the trustees and said it would be preferable to communicate with the beneficiaries to explain decisions.
Delegates then heard David Craddock's own paper on succession planning, using the Kelso Model employee benefit trust. This was developed by Louis Kelso in 1956 and was the first time a trust had been used in connection with what we now know as the ESOP model. David explained how the structure allows employees to benefit from the 'wages of capital' before showing diagrammatically how the company, trust, existing shareholders and employees interact to transfer ownership of shares from the existing shareholders to the employees.
Finally, David Pett was able to deliver his presentation via speaker-phone, while David Poole controlled the slides in the room. Mr Pett explained the concept of Joint Share Ownership Plans (JSOPs) and how to agree a value for future growth of a share with HMRC. David explained the position of JSOPs under disguised remuneration.
Registered delegates who were grounded and couldn't attend the Guernsey conference are being offered a free place at the Centre's Jersey conference for trustees on December 9. In addition, any Guernsey delegates who did attend, but were dissatisfied over the enforced speaker changes are being offered tickets for the Jersey event at half price.
Two Guernsey STEP members who did attend said afterwards: *"I thought you did everything you possibly could to deliver the content and I enjoyed the presentations."* A second delegate said: "*Overall, excellent in adverse circumstances. Congratulations"*

Employee participation in mutualised Post Office
Ministers have unveiled plans to move the Post Office into mutual ownership as part of the government's major overhaul of the Royal Mail.
The Post Office could be on a "clear path" to mutualisation by the end of this parliament, said Postal affairs minister Edward Davey at the launch of a consultation paper on the proposals. Subpostmasters, customers and communities could be given a say in how the Post Office arm of the network is run, including the appointment of directors.
The move follows the announcement of a plan to privatise the Royal Mail side of the postal business, which the government argues is necessary to protect its future and ensure growth.
The consultation – *Building a Mutual Post Office* – follows a report earlier this year led by Co-operatives UK, the trade body that works to promote them, which suggested that a mutual body, such as a company or a co-operative, could be set up, with members including staff and customers. The government would then transfer ownership of the Post Office to that body, which would have a say in board appointments, as well as sharing in profits.
Mr Davey said: "The consultation … sets out the different options for how we might enable subpostmasters, employees, post office customers and local communities to have a real stake in the future of the Post Office. Combined with our major investment programme and the Post Office's ambition to become the 'front office for government', a mutualised Post Office could help link a new commercial focus with an even stronger community purpose."
The government said it believed that Post Office Ltd could be ideally suited to a mutual model, with those that know it best working together, giving them a greater say in how the business is run, as well as a stake in its success. Changing Post Office Ltd – the national company which sets the strategy for the post office network and operates some larger branches – to a mutual would not affect the thousands of privately owned branches across the UK, said Davey.
The Co-operatives UK report suggested a number of models, such as John Lewis or the Co-operative, but Davey said the Post Office mutual could be a hybrid of different ideas.
The coalition was investing £1.34bn into the Post Office to improve efficiency and levels of service, but mutualisation would help secure its future, he said. The consultation will continue until mid-December, but it could take years before the process is completed. The government's plans to privatise the Royal Mail were waiting for regulatory changes and European clearance on state aid, but Davey said there had been a "dramatic change of atmosphere" now the postal services legislation had been approved by parliament.
Billy Hayes, general secretary of the CWU communications workers' union, claimed that the government was trying to wash its hands of the Post Office by pursuing an ideological agenda of privatisation. "This is jeopardising the future of the postal service, not securing it. Mutualisation won't keep post office counters open," Hayes said.

Cabinet minister in move against LTIPs
Business Secretary Vince Cable threatened to sweep away complex pay structures that have become popular in Britain's boardrooms as he aims to simplify remuneration schemes and strengthen the link between bonuses and performance.
He may bolster share ownership among directors, rather than handing them the potential to earn shares through intricate long-term incentive plans (LTIPs), which can make it difficult to value pay deals but which are now common place.
According to one recent report, between 1998 and

2010 the ratio of the pay packages granted FTSE 100 ceos in relation to the salary of the average UK employee increased from 1:45 to 1:120. Recent sharp falls in stock market prices have increased investor perceptions that they are being taken for a ride by some executive directors.

Although many UK companies have taken important steps to promote pay policy transparency and connect executive pay to performance, some publicly listed companies still lag behind globally recognised best practices. Only half of major UK companies have established targets for long-term executive incentive pay plans that link payout to the company's performance relative to a peer group and more than one-third of them still dont link long-term executive incentive payout to total shareholder returns.

Cable's proposals, put forward in two discussion pappers, include:

*Improving disclosure on pay, possibly by forcing firms to publish the total reward figure, including salary, bonuses, share schemes and pensions of each director and highest earners below board level. Company reporting requirements would be simplified, giving clear and relevant information to investors on pay and performance.

*Publishing that the ratio between the chief executive's pay and median earnings in a company

*Giving shareholders the right to veto and rescind directors' pay packages by binding agm votes.

*Requiring companies to publish the number of women who sit on their boards, following the review by Lord Davies on women in busines.

*Permitting all companies to claw back executive bonuses in the way that banks have been required to do since the banking crisis

*Possibly allowing employee representation on remuneration committees, if that would help restrict executive pay.

*Simplifying pay deals for executives – which can include salaries, bonuses, LTIPs and other reward vehicles

*Forcing directors to hold shares for longer, possibly until retirement.

One of the discussion papers concerned executive pay, focusing on how to curb pay asymmetry — where escalating pay at the top does not correlate with company performance. The discussion paper is a result of conversations government has had with shareholders, investors and business leaders on pay and sets out their thoughts.

Businesses will have to provide clearer information on how they are run and how executive pay is matched to performance under Cable's proposals. These will increase transparency and accountability in the investment chain and enable shareholders to get a real picture of what is happening to inform their investment decisions and help our economy grow.

Measures to improve reporting on remuneration include requiring companies to provide information on the link between the performance of companies and top executives' earnings. For example, requiring disclosure where the remuneration committee has agreed to pay bonuses when performance targets have not been met.

Sean O'Hare, reward partner at **PricewaterhouseCoopers**, said: "What is needed is more focus on simplicity. Performance-related pay has grown too complex and forms too great a proportion of the package, resulting in unintended consequences, volatile payouts and frustration for shareholders, remuneration committees and executives alike". LTIPs, O'Hare said, may have "outlived their purpose".

In 1998, salaries made up more than 40 percent of total remuneration for FTSE 100 chief executives but by 2010, salaries amounted to less than 20 percent as bonuses, LTIPs, share options and pensions became more prevalent. The median total remuneration of FTSE 100 chief executives rose from £1m to £4.2m over the 12 years.

"Simpler schemes, such as where executives are paid a competitive total package, but required to hold a significant proportion in shares for a long period, are more likely to enhance the long-term link between pay and performance," O'Hare said.

Such a move away from LTIPs, if endorsed by companies, would represent a change in the way executives are paid although the consultation document notes that if directors are required to hold shares until they retire it could "raise questions" about the behaviour of director.

Cable is looking at ways of making pay more transparent and easier to compare among companies in a separate paper on narrative reporting. It raises the idea of publishing a ratio of ceo pay to the rest of the workforce as well as a figure showing the total remuneration paid to each director and how it relates to company performance. The idea of ratios is unpopular with some. John Cridland, director general of employers' body the CBI, said: "We welcome this consultation, but executive pay must not become a political football, and simplistic measures like ratios will not address the problem."

A strategic report which sets out the strategy, direction and challenges facing the company, is envisaged as a way to simplify the lengthy explanations that feature in some annual reports. Among other proposals is making the vote on remunerations reports – introduced by Labour in 2002 – binding rather than advisory.

"It is hard to explain why shareholders vote to cut top pay but the managers can ignore the vote. And surely pay should be transparent; not hidden from shareholders, and the public. I want to call time on payouts for failure," Cable said.

But investors defended their role in trying to keep a

link between pay and performance. Marc Jobling, assistant director, corporate governance at the Assocation of British Insurers, which was publishing an update on its pay code, said: “Whilst there are issues to be examined, it should be recognised that many UK corporate governance practices are world class.”

Centre Awards dinner

The **Sanne Group** is sponsoring the Centre’s sell-out black tie annual awards dinner on **Tuesday November 1** at the Oriental Club in London W1. The Jersey based Sanne Group newsletter said: “The Centre’s awards dinner is a major event in the share plan calendar.” Sanne Group’s executive incentives business delivers specialist services to employee and executive incentive plans and works with the Centre in pursuit of promoting excellence in the share plan administration sector. For more information please contact director Peter Mossop E: Peter.Mossop@sannegroup.com Post: 13 Castle Street, St Helier, Jersey JE4 5UT. Tel. +44 (0)1534 750550 Mob +44 (0)7700 750 550 Fax. +44(0)1534 769770

Shadow Treasury Minister and Labour and Co-op MP, Christopher Leslie, will address the guests and present the awards to the winners. As in previous years, a champagne reception will be followed by a three-course dinner. Almost 80 Centre members have already registered and very few tickets are left at £150 + VAT each or £1,400 + VAT for a table for ten. Reservation by email to: esop@hurlstons.com. All enquiries to national director David Poole.

CONFERENCES

Jersey Dec 9: The Esop Centre and STEP Jersey will host the second of the Centre’s annual Channel Island conferences on **Friday, December 9** this year where disguised remuneration will be addressed, asking what steps trustees should take to ensure they stay onside of the fiendishly complicated new rules.

HMRC is still working on its guidance on disguised remuneration, the draft version of which covered more than 200 pages. The Esop Centre and its members are in regular contact with HRMC officials to ensure that legitimate reward schemes are not affected. Delegates will hear a company case study and a presentation on underwater options. More than 20 people have already confirmed attendance. The programme has been specifically developed for anyone who deals with employee benefit trusts and would like to keep up to date with the latest regulators, legislative and practical developments affecting employee share schemes.

The conference programme will run from 8:45 – 14:00 at the Pomme d’Or Hotel, St Helier. Tickets are on sale at £295 for Esop/STEP members and £425 for non-members. Email esop@hurlstons.com now to reserve your seat.

Centre chairman, **Malcolm Hurlston**, will open the conference by giving an update on the Centre and its activities. **Juliet Halfhead** of **Deloitte** will give background context to the legislation and speak on non-approved share schemes, the tax exemptions available and how they have been affected by recent tax law.

William Franklin of **Pett, Franklin & Co. LLP** will talk about Joint Share Ownership Plans and clarify their position under the new legislation. **David Craddock** will speak on share price volatility and what to do about underwater options – useful information indeed in the current climate. Finally, **Alan Judes** of **Strategic Remuneration** will introduce **Ron Forrest’s** case study of the share scheme at **Perkins Slade Ltd.** Breakfast and registration are from 08:45 – 09:15 and lunch will follow the conference from 13:00 – 14:00. To reserve your space, email: esop@hurlstons.com - Fees: £295 for STEP/Esop Centre members £425 for non-members. The conference is CPD accredited for 3.5 hours of professional development with the SRA.

DAVOS Feb 2 & 3:

The worldwide stock purchase plan of telecoms giant Ericsson is one of the major highlights during the Centre’s next annual Global Employee Equity Forum, which takes place in the Steigenberger Belvedere Hotel in Davos Platz on **Thursday February 2 and Friday February 3.** The Ericsson presentation will be delivered by Iain Wilson of Computershare, which administers the plan for employees in 100 countries in which Ericsson operates. This two-day event takes place in the slipstream of the World Economic Forum. Speaker slots reserved in Davos to date include: **Baker & McKenzie, BDO Human Capital, Capita Registrars, Computershare, Credit Suisse, Henderson Global Investors, Killik Employee Services, Macfarlanes LLP, Minter Ellison, MM & K, Norse Solutions, Pett, Franklin & Co. LLP, RBC Corporate Employee & Executive Solutions and Strategic Remuneration.** The programme can be reviewed in detail on the Centre website at: www. hurlstons.com/esop and click onto ‘events.’ You can download our e-brochure, **co-sponsored by Appleby Global and by RBC CEES** and you can reserve your delegate place online too. Only two speaker slots remain to be filled, so those Centre members intending to present, but not yet on our list, should reserve their slots asap. The Davos programme highlights latest developments in employee equity – including regulatory pressures on executive equity reward packages; employee equity case studies; plan administration techniques; corporate governance issues in the EU and USA; disguised remuneration, accounting standards; cross-border taxation, trustee updates and national spotlights. Delegates can put forward their own views during a 40-minute open debate about the key issues.

Package Deal Fees*: *No sales tax is payable on these fees. The package price* ***includes*** *two nights half-board accommodation in the five-star Steigenberger Belvedere Hotel, Davos Platz, admission to all conference sessions, light refreshments throughout and the cocktail party.*

Speakers: Service providers **£ 785**
Equity plan issuers **£ 490**
Delegates: Centre members
Practitioners (service providers) **£ 925**
Equity plan issuers **£535**
Delegates: Non members
Practitioners (service providers) **£ 1395**
Equity plan issuers **£ 685**

Speakers and delegates are invited to the Centre's annual Davos cocktail party on the Thursday evening (partners & visiting friends welcome) and there will be a pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. The programme includes extended afternoon breaks on Thursday and Friday, so that keen skiers can hit the slopes after the morning sessions. Packed lunches are supplied on demand. If you would like to either speak at Davos, or attend as a delegate, please email Fred Hackworth, Centre international director, asap at: fhackworth@hurlstons.com

Treasury criticized over SAYE bonus cut

HMRC's decision last August to cut the tax-free interest paid on new SAYE plans to zero percent has come under fire in recent weeks. In effect, HMRC has made it less attractive to invest in Sharesave by removing the tax-free cash bonus. While this will not affect employee participation in existing SAYE plans, future schemes could be hit by this change. HMRC said that it had cut the SAYE interest rate to zero percent because of prolonged falls in swap rates, which govern the rates at which banks lend among themselves.

HMRC woos Eso industry

The first meeting of the Office of Tax Simplification's probe into the complex taxation of the UK employee share schemes sector took place on September 28.

Almost simultaneously, HMRC announced the establishment of an Employment-Related Securities Forum and invited the Centre to appoint a representative. The first meeting of the forum takes place at 2pm on **November 28** at HM Treasury, 1 Horse Guards Road, London SW1. HMRC said: "The new Forum will facilitate an open and ongoing dialogue between HMRC and representative bodies on a range of operational and process issues relating to tax and employment-related securities. Through a network of joint sub-groups, it will provide for closer working between HMRC and its customers. Once agreed, draft terms of reference will be published on the HMRC website, along with the minutes of Forum meetings and a list of those organisations participating in the Forum." It will operate under the Chatham House Rule, which says that '*participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed'*. This will enable members to speak freely and express views that may not be those of their organisations. The proposed focus of the Forum is overarching operational matters of relevance to the broad range of HMRC service users - rather than any detailed technical issues generated by individual cases, or proposals for changes to the availability of tax reliefs. If your organisation would like to be represented on the Forum, please notify Hasmukh Dodia at shareschemes@hmrc.gsi.gov.uk and provide contact details for the person who will attend meetings on behalf of your organisation.

On the move

***Tom Hicks**, formerly of Appleby has joined Sanne Group as an associate director in Sanne's executive incentives division. Peter Mossop, head of Sanne executive incentives said, "We are delighted to have Tom on board. He is a qualified accountant and an experienced trust practitioner with ten years of direct experience of the operation of employee trusts and associated administration. Through the years he has been responsible for the management of some important employee trust relationships and he will be a valuable addition to the team. Tom joins us following the continued growth in our business and will take responsibility for a portfolio of clients and the management of our corporate actions team." He can be contacted at: tom.hicks@sannegroup.com or 01534 750547

***Sue Mellors**, financial services director and registrar at Diageo has left the company. She had to miss the Centre's Cannes conference this year because she has not enjoyed the best of health recently. Last year, she presented details of Diageo's worldwide Long Term Incentive Plan at the Global Employee Equity Forum in Davos.

***Loren Rodgers** is now executive director of the California based National Centre for Employee Ownership. He succeeds Corey Rosen, co-founder of NCEO, who held the post for many years. Rodgers speaks and writes extensively about employee communications, ESOP education, employee committees, business literacy, building and maintaining enthusiasm, current research, and corporate governance for employee ownership companies. Before joining the NCEO in 2005, he was a senior principal and co-owner of Ownership Associates, an employee ownership consulting firm in Cambridge, Massachusetts. He is a researcher and active volunteer in the field. His co-ordinates are: Email: LRodgers@nceo.org and phone: (510) 208-1307

*Centre conference speaker **Joe Saburn** has joined the US law firm of Norris McLaughlin & Marcus as partner and co-chair of the employee benefits and executive compensation practice and works in the NJ and NY offices. His contact information is: Joseph M. Saburn Norris McLaughlin & Marcus 721 Route 202-206 Bridgewater, NJ 08807, Tel 908-252-4303

Bouygues announced a share buy back offer worth €1.25 bn covering a maximum of 11.7 percent of the company's share capital at a price of €30 per share, a 30 percent premium. The repurchased shares will be cancelled. In response to a recent large fall in its share price amid heavy trading volumes, Bouygues is proposing a liquidity opportunity to those shareholders who wish to take it, offering them a premium of 29 percent to the one-month average share price. The supervisory boards of the company's employee share ownership funds, which hold 20 percent of the share capital, will meet shortly to decide whether to tender their shares in the offer. It must be approved by an egm.

Centre member Killik Employee Services has published an important booklet entitled 'Money In Mind' which tackles the thorny issue of financial education in the UK workplace. MD Martin Osborne-Shaw told *newspad*: "Employees are now saying that they both need and want help to manage their money in a world where inflation-busting pay rises, regular promotions and fixed retirement ages are a thing of the past. Household budgets are now under at least as much pressure as they were at the bottom of the 2008 recession. Things aren't likely to get better any time soon: the faltering economic recovery and the consequences of this for employees has brought about a shift in attitudes. Employers now have a clear interest in helping staff to understand how to make the most of what they've got. Any reasonable employer understands that an anxious, tired and distracted workforce is unlikely to perform at its best."

He added: "At a time when many organisations cannot afford to reward and incentivise employees with cash, helping individuals reduce debt, boost their pension provision and adequately protect their families from financial misfortune could provide a far greater financial reward long-term to the employee - at a much reduced cost to the employer. By educating employees on how to tackle personal debt, the likelihood is that they will be able to get finances back on track, and therefore worry about it less. Employers can then expect a return to normal levels of concentration and renewed focus on work tasks, as well as a reduction in money-related sickness absence."

In the private sector, the landscape for Workplace Financial Education is changing, with all eligible workers having to be enrolled into a qualifying pension scheme from October 2012. In addition, the Retail Distribution Review (RDR), to be implemented from January 2013, will modernise the way investment advice about products, such as ISAs and pensions, is provided. This too will have consequences for employers and employees that need to be understood and acted upon. The RDR is a key part of a strategy to protect investors, but it will pose challenges for employers when it comes to funding financial education for employees around pension provision. The move could prompt smaller employers or those that are short of cash to move away from providing an occupational pension scheme and instead enrol employees into the National Employment Savings Trust (NEST) Yet, without financial education around pensions, employees risk opting for inappropriate investment funds or selecting over-ambitious retirement dates and becoming even more worried and less productive than before. Contact Killik Employee Services: email: moneyinmind@killik.com.

PAYE settlements in respect of share awards – no Section 222 charge?

Centre member **Deloitte** warned of a different approach being adopted by HMRC to settling cases where an employer has not properly accounted for PAYE on share awards made to employees. Where PAYE has not been paid by the employer, an additional tax charge can arise under Section 222 ITEPA 2003 in relation to the amount of PAYE which is due, but which the employee has not paid to the employer within 90 days of the award. HMRC's new approach considers whether the employer has a right to recover from the employee the PAYE that has to be paid to HMRC. Whether it applies turns on the particular facts, but if it does, it can mean that no Section 222 tax is due. To ensure that no more tax is paid than is due, it is important that this new approach is considered where there are settlement negotiations in progress with HMRC involving Section 222; it may be relevant where settlements have been reached with HMRC including Section 222 tax, which may potentially have been paid in error. For more info, please contact James Warwick on 020 7007 1461 or Lesley Sadler on 020 7007 1712 both at Deloitte.

INTERNATIONAL

France: From April 1 this year, income and social tax withholding has been required for cross-border employees on French-sourced income earned from French-qualified stock options. Since gains on French-qualified stock options are taxable upon sale of the underlying stock, this requirement may present an administrative challenge to some companies.

*Article One of a Bill which has passed through the French National Assembly provides that all French commercial companies with more than 50 employees must negotiate the principle and modalities of a bonus to be paid to their employees at the same time as they distribute dividends to their shareholders, but only IF

the amount per share they are proposing to pay by dividend will be higher than the average amount of dividends distributed during the previous two years.

Ireland: **Aer Lingus** chairman Colin Barrington attacked Ryanair's categorisation of Aer Lingus's decision last December to buy out the interests of the employee share ownership trust (Esot) as a "gift". He described this as "grossly misleading". Mr Barrington said the requirement to pay part of its profits to the Esot through to April 2023 would have been a continuing cause of uncertainty and a drain on its profits. He said the annual interest rate on the Esot loan, payable by Aer Lingus, was approaching ten percent. "This was a significant multiple of what the company earns on its free cash and so use of a small part of that free cash to extinguish that obligation made sound financial sense." Aer Lingus paid €25m last year to clear the Esot's outstanding debts, thereby quashing the Esot's rights to share in any future profits at the airline and its ability to nominate directors to the Aer Lingus board. Mr Barrington said the move improved the free float of Aer Lingus from about 30 percent to 42 percent. He said the decision to buy out Aer Lingus's obligations under the 2006 profit-sharing arrangement made financial sense and was in the "best interests of our shareholders".

Accounting consultants **PricewaterhouseCoopers** has been appointed as an intermediary for current and former employees of the Irish **Electricity Supply Board** (ESB) to trade its shares in the semi-state owned utility. PWC has been selected as a 'grey market operator' to deal in ESB shares. Full details of the contract have not yet been finalised as the Revenue Commissioners have not yet granted permission for the establishment of the grey market. The move could allow the trading of shares held by the ESB's Esop, which has built up a five percent stake in the ESB after a series of industrial relations deals.

Jersey companies are popular as listing vehicles and more international businesses are likely to choose a Jersey holding company to lead them to market in future, said Centre member **Ogier**. In October 2009 Jersey was approved as an overseas jurisdiction by the Hong Kong Stock Exchange, paving the way for Jersey companies to float on the HKSE. Jersey companies were already listed worldwide, from New York (NASDAQ) to London (Main Market, AIM and PLUS), Amsterdam (Euronext), Toronto (TSX and TSXV) and Stockholm. For many years the island has been subject to the Organisation for Economic Cooperation and Development Convention and later designated as a 'white-listed' jurisdiction, meeting agreed international tax standards for information exchange and cooperation. In addition, Jersey received one of the most favourable reports of all jurisdictions when the International Monetary Fund published its report in September 2009 on the island's anti-money laundering and countering of financial terrorism regime, showing that Jersey complied with all of the core principles for effective banking supervision and complied with 44 of the 49 general recommendations (the highest ever recorded by the IMF; compared to 36 for the UK and 33 for Switzerland).

While Jersey is lobbying intensely, **Guernsey'**s finance industry reps are trying to capture new business, said deputy ceo and technical director at Guernsey Finance, Fiona Le Poidevin. With the balance of growth transferring to the east, Guernsey has set its sights on Asia. In May, the Hong Kong Stock Exchange's executive committee gave its approval for Guernsey incorporated companies to list on the exchange. Several Guernsey companies have opened offices in Asia: Law firms Mourant Ozannes will open in Hong Kong in August, Collas Crill is in Singapore, Ogier in Shanghai. Nerine Group was the first Channel Islands trust company to open in India last April. These moves have been boosted by Guernsey's political authorities. Last year, the island's chief minister Lyndon Trott signed a Memorandum of Understanding with the Shanghai Financial Services Office, and a tax information exchange agreement was made with Chinese authorities on the same trip. A further trip to Hong Kong is planned later this year.

Business leaders in **Zimbabwe** say many foreign-owned companies are taking steps to transfer a majority of their shares to their own workers as the most constructive way to comply with the country's black empowerment programme. Representatives of the National Chamber of Commerce, the Confederation of Zimbabwe Industries and the Matabeleland Chamber of Industries told said most of these firms will transfer the shares as grants. They said employees will be motivated to boost production if they have a stake in their firms, and they see this approach as a way to ensure that 'indigenisation' does not benefit politicians, especially ZANU-PF leaders. Business leaders noted that the indigenisation models advanced by insurer Old Mutual and hotel operator Meikles Africa Ltd are attractive to companies looking for a palatable way to comply with the Indigenisation and Economic Empowerment Act and regulations obliging them to put 51 percent of their equity in local hands. Old Mutual's proposal would give policyholders a stake of ten percent and employees nine percent with the rest placed with a youth empowerment fund and investment partners. Meikles plans to put ten percent in employee hands. Former Chamber of Commerce President Trust Chikohora said foreign-owned companies are finding innovative ways of complying with the indigenisation programme, including community ownership trusts benefiting residents in their local areas.

Reward clawback to become widespread

An influential new code that requires bonuses be clawed back in the event that performance targets are not met, was published as this edition of *newspad* went to press. The Association of British Insurers signalled anxiety about pay deals handed out just to enable executives to keep up with their peers. It says bonuses should not be paid at all if the company suffers "an exceptional negative event," even if other performance targets are met.

The ABI warned corporate boardrooms of rising shareholder concern about the ever-increasing size of directors' and other senior executives' pay packets. The remuneration guidance requires companies to spell out why directors are being granted additional reward.

"The constant chasing of perceived median has been a major contributor to the spiralling levels of pay," the ABI said. For first time, it highlighted the 'quantum' of pay for directors and from now on requires overall pay for boardroom bosses to be considered in the context of overall pay deals outside the highest echelons of the company. The Department for Business, Innovation and Skills is consulting on potential new rules and recent data showing that the median total remuneration of FTSE 100 chief executives rose from £1m to £4.2m during only 12 years. The effectiveness of the new ABI code will become apparent if its members – institutional shareholders controlling a fifth of the stock market – vote against remuneration policies when these breach the guidance.

The new ABI guidelines seek to restrict the percentage of a company's equity which can be held in Employee Share Ownership Trusts (ESOTs) to less than five percent without express shareholder permission. The guidelines say: "ESOTs should not hold more shares at any one time than would be required in practice to match their outstanding liabilities, nor should they be used as an anti-takeover or similar device. Furthermore an ESOT's deed should provide that any unvested shares held in the ESOT shall not be voted at shareholder meetings. The prior approval of shareholders should be obtained before five percent or more of a company's share capital at any one time may be held within ESOTs. Where companies have provided for an ESOT to be used to meet scheme requirements, they should disclose the number of shares held by the ESOT in order to assist shareholders with their evaluation of the overall use of shares for remuneration purposes. The company should explain its strategy in this regard."

A fuller analysis of the ABI guidelines, with comment from members, will follow in next month's issue of *newspad.*

Reward partner Sean O'Hare of Centre member **PwC** warned that UK bonus-related performance targets were likely to become more stringent, as companies focused their metrics more on revenues, profits and strategy. Almost one third of survey respondents said that their employers were planning to introduce "clawback" in 2012 – where outstanding deferred shares or other long-term incentives could be reduced if individuals under-performed. "One of the biggest causes of shareholder concern has been bonuses paying out even when company performance has been disappointing, as was sometimes the case in 2010," O'Hare added. "Toughening up executives' targets and ensuring they reflect business strategy has become a major focus." By next year about a third of companies will include claw-back clauses in executive pay schemes. These will enable boards to claim back deferred shares or other long-term incentives if executives fail to meet long-term targets.

Cincinnati Bell in the US is under fire after awarding multi-million dollar bonuses to its top executives while the company's revenue dropped by millions. In a landmark ruling, a federal judge has ruled that a lawsuit filed by shareholders has enough merit to go to trial. CEO Jack Cassidy received a $4m bonus in addition to his $4.5m salary and other compensation, in a year when Cincinnati Bell suffered a $61m decline in net income. Shareholders voted against the more than 70 percent pay increase for Cassidy and other bonuses awarded to top executives, but the board of directors paid out the bonuses anyway. A pension fund that owns Cincinnati Bell stock sued in Federal court. Cincinnati Bell filed a motion to dismiss the case, based on long standing case law known as the 'business judgment rule.' which gives corporate boards immunity from these kinds of lawsuits, other than in cases of outright fraud. Judge Timothy Black denied Cincinnati Bell's motion in a first-of-its-kind ruling **-** in part because of the new Dodd**-**Frank Wall Street Reform Act requiring publicly traded companies to seek shareholder approval for executive bonuses. The judge indicated the plaintiffs have a strong chance of winning the trial, calling it a "plausible claim that the multi-million dollar bonuses approved by the directors in a time of the company's declining financial performance violated Cincinnati Bell's pay-for-performance compensation policy and were not in the best interests of shareholders and therefore constituted an abuse of discretion and/or bad faith."

Over-cooked bonuses?

Average bonuses for directors of FTSE 350 companies have risen by 187 percent since 2002, without a corresponding rise in share prices, new research suggests. The **High Pay Commission** said that average annual bonuses were worth 48 percent of average directors' salaries in 2002, but are now 90 percent. Commission chairman Deborah Hargreaves said it was a myth that big bonuses meant companies performed better. The Department for Business, Innovation and Skills said it would study the report,

which it called “interesting”. During the time bosses’ salaries rose by 63 percent, said the report, which is due to publish its full findings in November. The Commission is backed by Compass group and the Joseph Rowntree Trust. The study found that total pay packages for company executives in the wider FTSE 350 had gone up by 700 percent since 2002 - while the share index itself had risen by only 21 percent. Ms Hargreaves said the share prices and performance of companies had not come close to matching the rises in pay and salaries. She said: “The evidence exposes the myth that big bonuses and high salaries result in better company performances. There has been massive growth in what has been termed as performance-related pay yet no such corresponding leap forward in company performance.” She said that changes to remuneration schemes were masking the real value of what executive get paid. “Corporate governance reforms attempting to link pay with performance appear to have done little more than add to the huge complexity of executive packages, reward schemes and bonuses that make up the pay of FTSE 100 directors,” Ms Hargreaves said. CBI director general John Cridland told the BBC high rewards for real business achievements were necessary and acceptable, but soft targets or payment for failure were not.

*Executive pay is set to rise next year but bonuses will remain stagnant for the majority of top directors, according to a new survey of senior reward professionals in FTSE 350 companies.

Four in five of those canvassed said that executive pay at their firms would grow in 2012, but 65 percent expected the increase to be in base salaries only, according to a **PwC** study. While a further 30 percent of the reward directors and heads of HR surveyed did anticipate a lift in other pay components, such as long-term incentives, 85 percent said bonus increases were not on the cards. The analysis revealed that less than 13 per cent of FTSE 350 companies were still likely to impose a pay freeze, but for the remainder, salaries are predicted to rise between two and four percent – broadly in line with 2011 rates. O’Hare said: “Even moderate pay increases in line with inflation are likely to prove controversial given the building public and political pressure to address the widening gulf between the highest and lowest earners, compounded by tough economic conditions. But whether anticipated salary rises play out next year will depend on whether markets improve. Increases that are not aligned to company and share price performance are likely to meet strong resistance from shareholders.”

*European banks may resort to more jobs cuts or zero bonuses as they struggle to maintain fixed compensation levels amid deteriorating financial markets. The companies face shrinking revenues and higher costs after raising base salaries of investment bankers by as much as 100 percent. That decision, which followed regulations to curb bonuses in the wake of the credit crisis, is irreversible even if conditions worsen, lawyers and consultants said, leaving banks with fewer options in their bid to improve margins.

*Compensation cost as a percentage of net income at the 20 largest investment banks will increase for a second year to 65 percent in 2011 from 55 percent in 2009, Barclays Capital analysts said. It could be more than 80 percent at the investment-banking units of UBS and Credit Suisse, both based in Zurich, and Tokyo-based Nomura Holdings, analysts said. “The absolute last thing banks will want to do is cut current salaries unless they have an explicit contractual right to do so,” said Jason Butwick, a London employment lawyer: “The legal, reputational, commercial and logistical risks of going down that route are huge.” European banks including UBS AG, Barclays, HSBC Holdings, Royal Bank of Scotland Group and Credit Suisse Group have announced more than 70,000 job cuts since midyear, compared with 42,000 by U.S. peers, according to data compiled by Bloomberg. Nomura Holdings, Japan’s largest brokerage, plans to cut about 5 percent of jobs in Europe. Fewer than 400 positions will be eliminated globally, with the majority in Europe.

*In contrast to the PwC’s survey findings, **Goldman Sachs** is reported to be reducing the base pay of its most senior London bankers to restore the relative importance of bonuses.

The US investment bank put up base salaries in 2009 by as much as 50 to 100 percent in some cases, in response to political pressure and the government tax on bonuses.

But a dip in revenue and difficulties managing performance in a less bonus-driven culture are thought to be possible reasons behind the move to invoke a clause that allows the firm to phase out the additional salaries. Last year, the bank paid its staff an average of £263,000 and its total pay and bonus pool amounted to $15.3bn. The pay cut is thought to affect staff at md or partner level. Chris Forbes, the ceo of PHD Search and Selection, a banking-sector headhunter, said paying bankers more in salary and less in incentives does not produce the best results for banks, as it removes incentives. “High base salaries and low bonuses are not part of the traditional culture of the City.”

*Meanwhile, a Daily Telegraph investigation has discovered that **quango** chiefs are earning up to twice their basic salary through a series of undisclosed additional payments. The newspaper claims that bonuses, special allowances and pensions windfalls omitted from government data released earlier this year are doubling the earning potential of top posts. The Cabinet Office list – which detailed the country’s highest paid officials and civil

servants – was topped by Tony Fountain, the ceo of the **Nuclear Decommissioning Authority** (NDA). He was listed as receiving a pay package of more than £520,000 – comprising a basic salary of £365,000, a second home allowance of £85,937 and pension payments of £70,810. But the NDA's annual accounts disclosed that the former BP executive also received a performance bonus of £146,000 and additional payments of almost £9,000, bringing his total pay to more than £675,000. Lena Wilson, **Scottish Enterprise's** ceo, was paid a £200,000 salary in her first full year in the post, according to SE's annual report and accounts just published. Her pay rise from £191,000 helped to offset the ban on bonuses for senior public servants imposed by the Scottish Government, which saw the previous year's bonuses of £53,000 for six executive team members, including £11,000 for Ms Wilson, reduced to nil.

***WPP** surprised its major investors by suggesting that Sir Martin Sorrell, its long-standing ceo, should be awarded a pay rise of as much as 50 percent that could take his salary to £1.5m and push up the potential bonuses he might receive. The advertising and marketing group, founded by Sorrell and home to names such as JWT and Ogilvy & Mather, has not increased Sorrell's £1m salary since January 2007 argues that the ceo needs a boost in his basic pay to keep pace with his rivals. Bonuses and potential long-term incentive plans are usually set as a multiple of basic pay. Sorrell, who turned a shell company called Wire & Plastic Products into an empire that includes media buyers Mediacom, market researchers Kantar and public relations firms Hill & Knowlton and Finsbury, has often ranked high in the *Guardian's* executive pay surveys. He pocketed £50m of shares in 2005 after a long-term share scheme – the leadership equity acquisition plan, or LEAP – matured. He took home £4.2m last year after his £1m salary was enhanced by benefits, bonuses and shares. WPP endured a rebellion on the issue in June when more than 40 percent of investors failed to back the remuneration report, largely because Mark Read, ceo of WPP Digital, was handed a 30 percent rise to take his salary to £425,000. One investor said: "This is just not the time to be pushing for a pay rise."

Golden coffin equity award payouts

Should Omnicom CEO John Wren die in office, his family will collect $41m in posthumous benefits, including equity awards, incentives and life insurance. Many US companies have special clauses embedded in their executive compensation contracts to provide massive payouts in the event of a death. Under 'golden coffin' arrangements, ceos who die in harness may be entitled to lavish payouts upon death. James Bernhard at Shaw was promised $17m just for agreeing not to compete after death and that didn't cover the rest of his compensation package, which includes unearned pay, stock options and other benefits provided to family members in hefty financial commitments guaranteed in the event of a death in office. Under pressure, Shaw's board approved a policy to give shareholders an advisory vote on new executive employment agreements that offer golden coffin benefits. However, Shaw's board will have the final say, a spokeswoman said. The board at Nabors Industries cut the potential $260m value of golden coffin payments to its CEO and its COO. Johnson Controls revised one death benefit provision that had awarded a payment to heirs equal to ten years salary upon death of a key executive. Cynics suggest that golden coffins help fend off hostile takeover attempts by ensuring that no acquiring company would want to take on such obligations, while proponents say they provide financial protection and security to the families of high-ranking company officers.

As you were on double tax

Proposed legislation to combat tax avoidance involving double tax treaties has been abandoned, the Government confirmed responses to a consultation suggested that the intended scope and effect of the new laws would create "significant uncertainty" about its scope and effect, David Gauke, Exchequer Secretary to the Treasury, said in a written statement. Double tax treaties are designed to protect against the risk of an individual or company being taxed twice where the same income is taxable in two countries, explained Centre member **Pinsent Masons.** The Government will instead "continue to challenge specific arrangements" that lead to tax evasion through the improper use of double tax treaties, Gauke said. The UK has around 120 double tax treaties in place with other countries and territories, according to HMRC figures. The proposed legislation, which would have been introduced in next year's Finance Bill, was intended to stop taxpayers from exploiting double tax treaties in order to avoid paying tax in the UK. The Government abandoning the plans was unsurprising said Eloise Walker, a tax specialist at Pinsent Masons: "It was odds on that this would have to be abandoned, given its many difficulties and the manner in which it was introduced. One can only be thankful that HMRC have seen sense rather than pushing on regardless," she said. Gauke added: "If the Government concludes in the future that alternative approaches for legislating against treaty abuse are necessary, it will consult on these alternatives in line with the Tax Consultation Framework."

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