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# it's our business

newspad of the Employee Share Ownership Centre

## Centre helps Lib-Dems to broaden the Eso message

The Centre is playing an important role in shifting the focus of Lib-Dem policy in the Coalition Government more towards all-employee share ownership, rather than solely majority employee ownership.

Proof of this change came at the Lib-Dems September annual conference, where delegates approved overwhelmingly a complex motion demanding a big increase in the number of UK employees benefiting from share ownership schemes.

In the run up to this, Centre chairman Malcolm Hurlston and UK director David Poole held a series of meetings with the Lib-Dem working party on Mutuals, Employee Ownership, and Workplace Democracy and presented a paper to its members on the way forward for employee share ownership via the Coalition Government.

The key elements in the final conference motion – now official Lib-Dem Party policy – are:

- Employees in public companies with more than 250 employees should have the 'right to request' an all-employee share scheme, comprising at least five percent of the total issued shares.
- Employee share ownership in general be encouraged in a similar manner to the US, for example through a discount on Capital Gains Tax when businesses, or significant shares in a business are transferred to employees.
- Employees in firms where ownership is held collectively should be permitted to receive a 'profit share' tax free, which would be related to the maximum, which they would have been able to receive under an all employee share scheme.
- A more robust campaign to promote mutual ownership structures in public companies
- There should be a dedicated employee share ownership minister in the department of Business, Innovation & Skills. This would encourage a consistent approach in legislation, a reduction in 'unintended consequences' of business law, and ongoing support for and championing of this important sector.

However, more controversially, the policy motion commits the Lib-Dems to:

- Award a role for employee representatives in major corporate decisions, including conditions of employment; director's pay; and the strategic direction of the company
- Facilitate a right for companies to implement German-style two-tier board structures, with a supervisory board (including a shareholder's representative) and a management board (including a rank-and-file employee representative).

The Lib-Dem policy document, from which these key points were encapsulated in the motion, said: "Whilst more than 80 percent of FTSE 100 listed companies have tax-advantaged employee share schemes, fewer than half have all-employee schemes and far fewer still smaller listed companies have such schemes. We are

### *From the Chairman*

*There are chunks for industry to baulk at in the Lib Dems' new esop policy but essentially it marks a welcome and seismic shift in the direction of employee share ownership and the practical use of equity in companies of all shapes and sizes.*

*We know from the prospectus that most Direct Line employees will get a solid chunk of free shares which is good as far as it goes. What we expect to see under a government strong on commitment to employee ownership are full blown share schemes leading to substantial all-employee holdings.*

*There need to be strong incentives for all employees through equity, enough to produce a Mike Ashley effect, not just the tired old approach for managers which has made people in business look shabby compared with professions where bonuses are rare.*

***Malcolm Hurlston***

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keen to boost employee share ownership and employee influence within firms where there is currently a low proportion of equity held by employees. We therefore propose that employees in all publicly listed companies should have the 'right to request' a five percent stake in the business which, under company law, gives certain additional rights. In France if employees have a three percent shareholding in a company they have a legal right to a seat on the board."

The policy document added: "We consider that there is a strong case for giving a further boost to employee share ownership and so propose that there should be a requirement that any IPOs or further share offers on the London Stock Exchange should offer shares to employees on a *first refusal* basis, possibly with a predetermined discount. For a limited period (as public finances allow) firms with significant employee ownership (50 percent plus) should have a discounted employers NI rate.

"The government could encourage the mutual sector through legislative measures preventing further demutualisation of building societies, financial mutuals etc and use of asset locks to prevent employee-owned and mutuals from transferring assets to non mutuals. We see disadvantages in ossifying a mutual structure when in the future such a structure may not be appropriate."

During their meetings with the working group, Mr Hurlston and Mr Poole encouraged the Lib-Dems not to focus purely on employee ownership and mutuals, but to recognize the substantial merits of employee share ownership, which now exists in at least 12,500 UK companies.

The Centre paper told the Lib-Dems: "The main reason most companies give for not implementing a share scheme is either not qualifying for one of the tax-advantaged schemes or not wanting to have to issue shares without restrictions in order to qualify. In the case of implementing a share scheme to solve a succession issue, the anti-avoidance rules for employee benefits trusts (EBTs) are too stringent for their purpose. We would recommend that certain changes should be made to the existing legislation to make it easier for more companies to take advantage of the benefits associated with an employee share scheme.

These changes include, among others,

- Allowing venture capital-backed businesses to implement EMI,
- Switching from a gross assets test to a net assets test which would make more companies eligible for EMI,
- Removing preclusion of restricted shares for the Share Incentive Plan (SIP),
- A review of the rules for close companies,
- Removing the rules surrounding taxation of shares in a takeover for SIP.

The Centre team pointed out that as occupational pensions fall away, the savings based share plans, such as SAYE Sharesave, are seen as a key way in which to supplement pensions. As one in five people alive today are expected to reach the age of 100, government should encourage more methods of self-provision in retirement. Facilitating a transfer of assets from share plans into a pension plan, preferably using a tax-neutral method, would encourage more people to take up offers of shareholding in their company.

**Save Our CSOP**

The Chartered Institute of Taxation (CIOT) is backing the Centre's campaign to save the Company Share Option Plan (CSOP), which was threatened in comments made in the consultation on the Office of Tax Simplification's report undertaken by HMRC, on tax-advantaged employee share schemes.

The Chartered Institute has told HMRC that the CSOP should be retained and that its current tax approved limit of £30,000 should be raised.

"We agree with the proposal to further investigate the relevance of CSOPs. However, self- certification brings about the possibility of resurgence in popularity. In addition, for those employers who do use the CSOP, it remains valuable," said the CIOT in its submission to the OTS consultation process.

"It is not clear what would be gained by abolishing CSOP, particularly given the framework already exists, unless, perhaps, the cost savings that would arise are used to introduce a new, even more effective approved options scheme. Our feeling is, although we have not sought evidence to support this contention, is that the conditions for approval of a CSOP are too onerous and the £30,000 limit is too low to make it worthwhile for some employers.

"Instead of abolition, we would like to see the £30,000 limit increased and some of the conditions relaxed so that CSOPs become more relevant to today's business and more worthwhile to use," added the CIOT.

**BARCELONA**

The Centre's summer conference will take place in the five star **Le Meridien Hotel** on the iconic La Ramblas boulevard in central **Barcelona** on **Thursday & Friday June 6 & 7** next year. Le Meridien Hotel offers easy access to Barcelona's harbour, Barri Gotic (Gothic Quarter), El Liceo Opera theatre, museums and restaurants. The Centre has secured a package deal for the conference with two nights half-board accommodation. See website: www.starwoodhotels.com/lemeridien

Demand for reduced price speaker slots will be heavy, so reserve your place now by emailing international director Fred Hackworth at: fhackworth@esopcentre.com with copy to esop@esopcentre.com

You need only confirm your attendance for the moment, before sending your slot title in the weeks ahead. Partners are welcome. Those wishing to stay on over the weekend can do so for the same discounted price as the Centre has negotiated with the hotel for the package deal nights.

**HMRC explains EBT settlement rules**

Following enactment of the disguised remuneration rules, HMRC published a number of Frequently Asked Questions (FAQs), explaining its Employee Benefit Trust (EBT) settlement offer. This 'opportunity' is aimed at employers who have operated EBTs and who may consider settling outstanding HMRC enquires into the PAYE/NIC and corporation tax treatment of such arrangements.

EBT distributions, *backdated to December 9 2010*, are taxable as a 'relevant step' under the disguised remuneration rules.

HMRC's position as set out in the FAQs is unchanged, i.e. that the original employer contributions should have been taxed as employment income no later than when they were allocated to sub-trusts within the EBT. However, HMRC is in a talking, rather than punitive, mood…. at least for the time being.

Key points of interest, said Centre member **Deloitte**, include:

* Employers can approach HMRC to settle, whether under enquiry or not, with interest payable, but without penalties;

* PAYE and NIC are due at the rates in force at the time the allocations to sub-funds were made, with credit for taxes previously paid;

* Corporation Tax relief is reinstated where previously denied and deductible against PAYE and NIC;

* Capital growth within the EBT, subject to some restrictions, can normally be distributed to beneficiaries tax-free but any inheritance tax liabilities arising from the use of sub-trusts and the involvement of close companies will be pursued;

* It is possible to enter into 'proportional' settlements, in respect of some, but not all, beneficiaries of the EBT.

For a summary of the position see http://deloi.tt/NUnWMG. The FAQs are set out in full at http://deloi.tt/QbKleC. For further information please contact Stephen Woodhouse Tel 020 7007 6621

*Treasury Secretary David Gauke announced that draft clauses for **Finance Bill 2013** will be published for consultation on December 11, together with draft impact assessments and explanatory notes. In addition, the Government's responses to the consultations conducted over the summer will be published on or by December 11 this year. The draft clauses will be open for consultation until February 6 next year.

**On the move**

Employee share ownership may have found a new champion in the person of **Michael Fallon MP**, now minister of state for Business & Enterprise. Political commentators spoke of his promotion as an attempt by the PM to balance BIS Secretary of State Vince Cable's enthusiastic populist stance on many departmental issues with the state-cutting instincts of Mr Fallon. But few noticed that Mr Fallon has 'form' on the Eso front. Just before his promotion, he told *Workplace Savings & Benefits* magazine that favourable tax treatment of pension funds should depend upon whether they invest in companies which have Eso schemes. He said he wanted to see employee share ownership as a 'default setting' for large and medium sized companies in order to achieve the 'nirvana' of widespread share ownership. Mr Fallon cited the idea of Maurice Saatchi that pension schemes and private equity houses should only enjoy favourable tax treatment if they invested in SMEs which have Eso schemes in place. Fallon said that when he backed a business project with Dragon's Den star Duncan Bannatyne, he had insisted that the managers should all be given the chance to acquire shares in the venture. However, whether Mr Fallon intends to put his tanks on Mr Cable's lawn in the name of broad-based share ownership remains to be seen.

A former Centre Awards Dinner ministerial guest of honour, **David Gauke MP,** retains his job as Exchequer Secretary to the Treasury, where he has responsibility for HMRC, the Valuation Office Agency and the tax system. He is arguably the minister with most day-to-day contact with employee share ownership matters, albeit mostly by proxy. Another former guest of honour at the Centre awards dinner, Ex Treasury Financial Secretary **Mark Hoban MP**, has been moved to the Department of Work and Pensions, where his new post is Employment Minister. His replacement as Financial Secretary is **Greg Clark MP**, who has responsibility for financial services, personal savings and pensions.

Meanwhile, Centre chairman Malcolm Hurlston welcomed the appointment of **Jo Swinson MP** as Under-Secretary of State for Employment Relations, Consumer and Postal Affairs in the recent government reshuffle. It is unclear whether Jo regards herself as the new employee share schemes minister, because hitherto, this has not been a major area of parliamentary interest for her. Like her predecessor, **Norman Lamb MP**, who was promoted to Health Minister, Ms Swinson is a Lib-Dem MP, who sits for East Dunbartonshire and graduated with a management degree from the London School of Economics. At BIS, Mr Lamb was a champion of employee ownership, rather than employee *share* ownership, but, under the direction of Mr Cable, he nursed the Royal Mail Privatisation Bill, which when it becomes law will offer postal workers the chance to own at least ten percent of the equity in the new company, through employee share issues. BIS wants to see the postal workers' employee share scheme in operation by March 2015 at the latest.

Centre member **Accurate Equity** announced the opening of London offices at 35 New Broad Street, on October 1 and the appointment of new UK staff. This move brings back into the share scheme world none other than **Stuart Bailey**, who joins Accurate Equity as MD of UK operations. He has extensive experience in the share plans market, with a 30-year career spanning a range of high profile companies including Abbey, where he specialised in employee share plans, the Financial Services Authority and most recently the Money Advice Service, where he headed the national partnerships team and worked closely with the Centre. In his new role, Stuart will manage the local UK team and strategic partnerships. His team will include: **Mike Baker**, director of UK business development who has more than 20 years experience in the employee share plans and the UK share registration industries; **David Lee**, director of client implementation; and **Sophie Altaf**, senior manager, global marketing & business development, whose previous job was head of European marketing for Morgan Stanley Smith Barney. Further members of the UK team will be announced in due course. **Arne Peder Blix**, president & ceo of Norway based Accurate Equity, said: "As part of our continuing global expansion, in response to a growing demand for our tailored equity compensation solutions, we are excited to launch our new operations to provide services to the UK and Benelux markets via our strategically located hub in the City of London. Accurate Equity is growing at a phenomenal rate to meet growing industry demands and we ensure we have the best team with the right knowledge, attitude, experience, skill and network on board. Our UK operations will allow us to reach even more companies who are looking for unique cutting-edge solutions to maximise efficiency and accuracy of their equity compensation plans. Our new UK director, Stuart, is a strategic business manager with a wide range of experience in developing new business and providing excellent service to corporate clients," added Arne.

Centre friend **Henri Malosse** will become the new President of the **European Economic and Social Committee** next year for the period 2013-2015 and Jacek Krawczyk will succeed Henri as the new President of the Employers' Group of the EESC. M. Malosse has headed the employers' group since October 2006, which represents at the EU level, the interests of European entrepreneurs and business associations working in industry, commerce, services and agriculture and is one of the three pillars of the EESC. The President Elect envisages a real political ambition for this European institution: **"**The EESC must strengthen its capacity to anticipate and to assess by engaging a radical reform of its working methods. This is the only way to review the European debate and thus contribute to bringing citizens and EU and strengthening the European identity.**"** M. Malosse is an adviser on European affairs to the French Assembly of Chambers of Commerce and Industry (ACFCI). He has followed for many years European issues and is the inspiration behind many European programmes, particularly for small and medium enterprises.

Centre member **Pett, Franklin & Co. LLP** has celebrated its 3rd anniversary as an independent firm of specialist advisers. Share schemes guru David Pett told *newspad:* "William (Franklin), the team and I - AJ, Sophie, Louise, Jennie, Julian, Stephanie, and Xenia - would like to say a big "*thank you*" to all of our long-established and many new, clients and contacts for their support over this first three years. Long may it continue. Notwithstanding the persistent economic recession, we are still here and still very much enjoying ourselves!" The business moved to larger offices at Victoria House, 116 Colmore Row, Birmingham B3 3BD Tel: +44 (0) 121 348 7878 Email: enquiries@pettfranklin.com

**Matthew Vincent** who was the FT's Personal Finance Editor for many years has moved up to Companies Editor. **Jonathan Eley** is the FT's new Personal Finance Editor.

**Eso works…**

Share ownership boosts employee engagement, as employees who participate in such schemes seem to be more motivated and committed to their employer, according to new research. Three-quarters of UK employees who participate in their company's Eso plan said they felt more involved with their work, it was revealed in a **Loughborough University** study. Of those employees signed up to SAYE-Sharesave, the most widely used scheme, 71 per cent were more likely to consider the cost implications of their actions and 66 percent produced higher quality of work, the study showed. Half of all participating employees said they would now remain with their current employer longer than they would have otherwise.

**New Centre members**

The Centre is pleased to welcome into membership **Alter Domus,** which is a leading independent provider of professional administration services for multinational corporations and alternative investment funds. Founded in Luxembourg with origins in a Big Four accountancy practice, Alter Domus has 15 offices and desks across four continents and professional staff with strong expertise in corporate and management services, consolidation, fund administration, and financial reporting services. Alter Domus supports the accounting, tax, regulatory and compliance requirements of a variety of structures established by its clients in each of the jurisdictions in which it operates.

**Alter Domus Jersey** provides trustee and fund administration services to a wide range of clients from private companies to large UK, American, and European listed companies as well private equity and real estate fund managers.

Following the recruitment of **Davinia Smith**, previously of Lloyds TSB and Computershare Plan Managers, as the head of the international trust business, Alter Domus Jersey has had great success in building its experience and capabilities in the provision of trustee services for employee benefits trusts (EBTs) and corporate management services. As a result, Davinia has recently recruited Carla Walmsley (previously Sa) from her former team at Lloyds TSB/ Computershare as a manager and Phil Maletroit from DCG, previously Jersey Trust Company (Caversham) and AIB Trustees, as a senior manager. Both Phil and Carla bring a wealth of experience with to EBT work and share plan administration, as well as the broader corporate arena. The team can be contacted on 01534 826000 or using the following e-mail addresses davinia.smith@alterdomus.com, philip.maletroit@alterdomus.com and carla.walmsley@alterdomus.com

The Centre is pleased to welcome into membership **Grant Thornton UK LLP**, a leading accounting, business and financial adviser. Grant Thornton (GT) has boosted its award-winning employer solutions team with the appointment of new senior staff. Grant Thornton advises on a range of share incentive and reward arrangements both for executives and employees. **Amanda Flint** heads GT's central London based new reward group, providing services and advice on executive pay and incentive issues to companies and their remuneration committees - both in the UK and internationally. Her team includes: senior manager **Toby Locke** and manager **Victoria Green**.

**Amanda** said: "Remuneration is high profile and a sensitive subject for companies, many of which operate in the international market place. There are numerous challenges in structuring executive pay and a need to coordinate different disciplines in order to give sound commercial advice. Using the strength of our new team and leveraging our international network, I look forward to working with our clients to address these issues."

Toby, who trained as a lawyer, came to Grant Thornton from Deloitte, where he specialised in share schemes, employment tax and executive remuneration in large and multi-national firms. He has ten years' experience in the sector. Ms Green was previously a lawyer with US firm K&L Gates LLP, where she specialised in employee share schemes and employee tax, including cross-border projects with the US on these issues. Clive Fathers, partner and head of the Grant Thornton employer solutions team, said: "We are delighted to have Amanda on board with the wealth of experience that she brings. Her expertise in working with dynamic organisations to design best in breed reward strategies dovetails perfectly with our existing remuneration structuring skills. It will enhance our capabilities to provide our clients with a holistic suite of services and will be a key element of our strategy to double the size of our business in the five years to June 2015." For further info, contact Amanda Flint, partner, Tel: 020 7728 3145 e-mail: amanda.flint@uk.gt.com.

**Disguised remuneration claims banking victim**

**Handelsbanken,** the Swedish bank with bold ambitions for growth in the UK, has a profit-sharing system called the Oktogonen foundation, which only distributes the proceeds when individual employees reach their 60th birthday. It is one of the co-challenger banks which Business Secretary Vince Cable wants to encourage to lend more to small businesses. Every employee gets the same allocation, which is based on whether the bank outperforms its rivals. There are no sales targets and budgets to meet. Around 90 percent of the scheme's proceeds are invested in the bank's shares, something that regulators have been keen to encourage. However, the Oktogonen UK scheme has run into trouble. For the past two years the 1,100 UK based staff, working in 137 branches, have not received their allocation because of a change to the tax laws to deal with 'disguised' remuneration (pay not being taxed). Until two years ago HMRC had treated Oktogonen as an employer-funded retirement benefit scheme which meant tax was paid on receipt at age 60. But now staff are required to pay tax when their part of the pot is allocated. In Sweden tax is paid upon receipt by the individual scheme members and the bank feels it is exposing its staff to double taxation, so no distributions have been made to UK staff for two years. Handelsbanken insists that the scheme was never about tax avoidance. The Treasury referred queries to HMRC, which refused to comment. In his book on Handelsbanken, Niels Kroner describes Oktogonen as embodying "the bank's visceral dislike for risk-taking, its focus on concentrating on customer satisfaction over profits, and its emphasis on long-term orientation". He adds: "As the system has been in place for a very long time, there is simply no expectation of any special remuneration for doing the job well. Staff know that they will get a competitive salary and a very generous pension from the Oktogonen foundation once they retire."

**FATCA 'deal' is a half-empty glass**

Three of the four tax-approved employee share ownership schemes will be exempt from the US Foreign Account Tax Compliance Act (FATCA) conditions, the UK government has confirmed. HMRC launched a speedy consultation, seeking industry views on FATCA's implementation, in the UK after publishing the 72-page text of the bilateral UK-US FATCA Agreement, including annexes on definitions and exemptions. Draft legislation is to be published later this year.

Centre members who deal primarily with SAYE-

Sharesave, the Share Incentive Plan (SIP), or the Company Share Option Plan (CSOP) can breathe a sigh of relief, because they are exempt from the Act's onerous administrative demands.

However, neither the Enterprise Management Incentive (EMI), nor unapproved share plans, most commonly used in executive reward schemes, is mentioned in the official annexe of exempted products.

Several key Centre players are unhappy about these and other 'gaps' in the FATCA agreement and its annexes. **Justin Cooper,** chief operating officer of Centre member **Capita Registrars** said: "Yes – approved plans are exempt but there is no mention of unapproved plans in the agreement. In addition, more questions are raised than answered regarding the position of share registration accounts. This *glass half empty* scenario is evident in a 'split portfolio' of reporting, which leaves account tagging complex and onerous. This issue has some way to run yet…" he added. Tax law expert Eloise Walker of Centre member **Pinsent Masons** said that the announcement appeared to be good news for UK financial institutions. However, she added that uncertainty over the impact of the arrangements in practice would continue until the Government published its draft legislation.

FATCA is aimed at preventing tax evasion by US residents using foreign accounts. It introduces reporting requirements for foreign financial institutions (FFI) regarding accounts held by US residents, irrespective of national privacy laws. Institutions which do not collect and report this information can be subject to a 30 percent 'withholding tax' on their own US source income and sales proceeds. However, as part of the final agreement with the UK, withholding tax will not be imposed on income received or payments made by UK financial institutions. For FATCA's purposes, FFI includes any foreign entities whose principle business is accepting, holding, investing or trading in securities or commodities. This can include banks, investment funds, hedge funds, private equity funds and pension funds. However pension schemes or other retirement arrangements established in the UK will be exempt from the reporting requirements as they present "a low risk of being used to evade US tax", according to the Treasury, while individual savings accounts (ISAs), save as you earn (SAYE) schemes and premium bonds will be exempt too.

The UK is the first country to reach an agreement to implement FATCA and its agreement closely follows the model issued in conjunction with France, Germany, Italy, Spain and the US at the end of July. "This agreement demonstrates our commitment to working internationally to tackle tax evasion," said Exchequer Secretary David Gauke, who signed the agreement on behalf of the UK. "It is the first of its kind and represents a significant step forward in the scope and nature of information exchange between governments. Furthermore, the changes we have achieved to FATCA implementation will provide significant benefits to UK financial institutions." The agreement is subject to ratification by Parliament after a 21-day scrutiny period. Exemptions apply to public institutions including governmental organisations, the central bank and the UK offices of certain specified international organisations. Non-profit organisations, locally based financial organisations, such as credit unions and friendly societies which meet certain conditions, will be treated as 'deemed compliant FFIs', according to the agreement.

Tax authorities in the US will be required to pass on information about financial account holders who are UK residents as part of an agreement implementing FATCA. The Treasury said that the agreement established a reciprocal approach,' boosting the ability of HMRC to obtain information from the US to help tackle UK tax evasion in addition to preventing evasion by US taxpayers with accounts in the UK. The agreement contains a commitment by the US Government to pursue equivalent levels of information exchange to those that the UK must provide under FATCA.

Comments about the planned agreement must be received by HMRC by November 23. The lead official is Malcolm White. E-responses to: fatca. consultation@hmrc.gsi.gov.uk

CONFERENCES

**Awards Dinner November 6:**

A record 101 Centre members and their clients have registered for the World Centre's annual black-tie Awards Dinner, which takes place in the Oriental Club in London's west end on **Tuesday November 6**. A champagne reception will be followed by the dinner, during which the winners and runners-up for the three awards this year will be announced and their framed certificates presented by the guest of honour.

"It's almost a sell-out, which proves how much our annual Awards Dinner has become a central event in the share schemes world calendar," said Centre chairman Malcolm Hurlston.

For the first time, the Centre will make an award for the best share plan communications. With a full house guaranteed, sponsorship for the dinner becomes an attractive opportunity. Contact UK Director David Poole dpoole@esopcentre.com.

**Guernsey December 7:**

The Centre's annual joint employee share schemes conference, held in partnership with the Guernsey branch of the Society of Trust & Estate Practitioners (STEP), will take place in the Duke of Richmond Hotel, St Peter Port, on **Friday, December 7.** Entitled: ***'A New Start for Employee Benefit Trusts?'*** this event will be opened by Centre chairman **Malcolm Hurlston**.

More than 20 people have already registered.

Changes introduced by the disguised remuneration legislation have shaken up the trustee world and still present a major challenge to practitioners and their clients. However, the government's endorsement of employee ownership looks like good news for EBTs long-term. The Nuttall review supports the shares-in-trust model enshrined by EBTs and this should spark a wave of new business for Guernsey trustees. Expert speakers will offer trustee delegates the latest regulatory and legislative updates and showcase by example best practice models for employee share ownership. Confirmed speakers include: **Graeme Nuttall**, FFW LLP & independent adviser to the UK government; **David Pett**, Pett, Franklin & Co. LLP; **George King IV**, RBC Wealth Management; **Paul Malin**, Haines Watts, and **Alison McKrill**, STEP Guernsey. Tickets cost **£295** for Centre and/or STEP members and **£425** for non-members. For registrations, contact **Tena Prelec** at the Centre on 020 7239 4970 or email: tprelec@esopcentre.com

**DAVOS Feb 7 & 8, 2013:**

More than 30 people have already registered for the Centre's 14th Global Employee Equity Forum, on **Thursday February 7 and Friday February 8** at the five-star Steigenberger Belvedere Hotel, in Davos Platz.

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

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

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

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

The Davos preliminary programme can be accessed on the Centre's website ('events'). Members – whether service providers or plan issuers – still have the chance to propose themes for half-hour speaker slots – as two slots remain to be filled.

The programme includes presentations about:

- *The reconstruction of executive incentives: Institutional investors and remuneration committees*
- *Risk as a Component in Executive Equity Incentive Plans*
- *How are the latest regulatory and legal developments impacting employee equity?*
- *Are proposed UK government administrative changes to tax approved Eso plans enough?*
- *How to make global equity plans cost effective while delivering value*
- *Cross-border equity award taxation issues for highly mobile employees and their employers*
- *Corporate governance issues in US employee equity plans*
- *Employee share ownership developments across the EU member states*
- *Trustees: latest operational issues for both onshore and offshore EBT trusts*
- *Communicating equity plans to employees in a recession*

Potential slot themes should be submitted to Centre international director Fred Hackworth at: fhackworth@esopcentre.com.

Confirmed speakers to date include: **Malcolm Hurlston** Chairman, Esop Centre; **Arne Peder Blix**, President & CEO, Accurate Equity; **Alasdair Friend,** Associate, Baker & McKenzie LLP; **Justin Cooper**, Chief Operating Officer, Capita Registrars; **Fred Whittlesey**, Principal Consultant, Compensation Venture Group Inc; **Martyn Drake,** Director, Computershare; **Mike Pewton,** CEO, GlobalSharePlans; **Jeremy Mindell**, Senior Reward & Tax Manager, Henderson Global Investors; **Mike Landon**, Executive Compensation Director, MM&K; **David Pett**, partner, Pett, Franklin & Co. LLP and **Alan Judes**, MD, Strategic Remuneration. **Peter Mossop,** Director of Executive Incentives**,** Sanne Group**,** will chair the trustee panel on topical issues and the Q & A session.

Centre member service provider (practitioner) **speakers** pay only **£765** and no VAT for our two nights accommodation (on a half-board basis) + conference + cocktail party package deal. Plan issuer **speakers** pay only **£465** for the same deal. Equivalent rates for Centre member **delegates** are**:** Practitioner (service provider) members **£905** and no VAT**;** Eso plan issuer companies **£535.** Equivalent delegate rates for **non-members** are **£1,425** for practitioners and **£665** for plan issuers. Please sent delegate registrations to fhackworth@esopcentre.com with copy to esop@esopcentre.com

Mark these conference dates in your diaries and get sign-off from your purse-holder to attend.

**Direct Line employees await Eso plans news**

STOP PRESS:

Most of **Direct Line Group**'s 15,000 employees are to be awarded £250 worth of free shares each when the insurer is spun off from its parent, state-owned bank **Royal Bank of Scotland** (RBS), in a partial £2.7bn stock market flotation. However, at the time of writing, it remained unclear whether these employees will be offered the chance to participate in new versions of the employee share schemes to which they have had access while working for RBS, or whether they could continue to participate in the existing schemes. The broad-based Esos operated by RBS are SAYE-Sharesave, Buy-As-You-Earn

(BAYE) and the Company Share Option Plan (CSOP). Current Direct Line Group (DLG) share scheme participants await a pay out or a swap arrangement to cover their imminent departure from RBS.

About 25 percent of Direct Line will be offered in the initial share sale, with additional tranches to follow. RBS must sell a majority stake in DLG by the end of next year and sell off the entire company by the end of 2014. DLG, which has 4.2m personal motor policies and 4.3m home insurance policies in force, should be worth around £3bn, according to analysts.

However, DLG has revealed plans to hand out large share bonuses to directors and senior managers when it floats on the stock market. It is set to offer its ceo Paul Geddes and finance chief John Reizenstein golden handcuff deals designed to lock-in senior staff following the initial public offering, according to *The Sunday Times*. Mr Geddes is in line to receive a long-term incentive package worth around £3m in shares when the Churchill and Direct Line insurance firm makes its stock market debut. The bonus schemes will pay out only if the senior staff hit performance targets and stay in post for at least three years, said *The Press Association*. The group has plans to make £100m cost savings by the end of 2014. RBS, which is 82 percent owned by the State, must sell its interest in DLG, which includes the Green Flag and Privilege brands, under a EU-imposed condition over its £45 bn government bailout received in 2009.

**Shareholders awake**

Shareholders in **Darty Plc**, Europe's third-largest retailer, voted against executive pay awards, deciding they were too generous at a time of sharp falls in the company's sales and share price. Darty was part of the UK's accident-prone Kingfisher group, whose former Woolworths subsidiary collapsed into administration. The 58 percent vote against Darty's remuneration report at its agm came after the company sought to placate disgruntled investors with the announcement of the departure of ceo Thierry Falque-Pierrotin. Darty had been under fire over Falque-Pierrotin's remuneration after it admitted two months ago that stock options awarded to him in 2009 were not linked to performance targets, contrary to what it had stated earlier. Votes on executive pay are non-binding, but they alert management to investor dissatisfaction. "The remuneration report vote reflects two factors - unhappiness with the disclosure error from a governance perspective and concerns over executive remuneration," Darty chairman Alan Parker said. "The board will ensure the remuneration for the new ceo and the wider executive team...is commensurate with the evolving shape and focus of the group." Falque-Pierrotin was at the helm when the company re-branded itself and sold its loss-making UK business, Comet. Darty's shares have fallen 58 percent in the past year as the company fought aggressive competition from supermarket chains and online retailers. Eric Knight of Knight Vinke, the company's top shareholder, said Darty needed to create a more meritocratic environment. "How would you feel if you discovered that your CEO basically had a separate deal which meant that he got paid and you don't? It's very bad for motivation," Knight said ourside the agm. The company, formerly known as Kesa, said it had begun a search for a successor to Falque-Pierrotin, who will leave his post in December.

Shareholders in **Sports Direct**, Britain's biggest sporting goods retailer, rejected a proposal that could have netted Mike Ashley, its billionaire founder, a bonus share award worth £26m. The company had planned to ask investors at its agm to back the grant of eight million shares to Ashley, which would could only be sold in 2018 if performance criteria were met. Ashley owns 71 percent of Sports Direct and is executive deputy chairman. He does not take a salary and generates significant free advertising for the company through his ownership of Newcastle United soccer club. Although the level of proxy votes in favour of the special resolution was more than 60 percent, it did not reach the required 75 percent. Ashley was not allowed to vote his holding and the board decided to withdraw the resolution from the meeting. "As a board, we are very disappointed that this resolution was not passed, however we respect shareholders' views," said Dave Singleton, chairman of Sports Direct's remuneration committee. He said a new scheme would be proposed to shareholders at a future meeting. The news on the Sports Direct proposal came on the same day the company posted some better news for investors: a 25 percent jump in first Q sales. The profits were well ahead of the £225m needed under the bonus scheme, which gives 2,000 full time staff a first installment of an average 5,000 shares each, worth £15,000. In addition, employees have been handed the chance to cash in a further 12,000 shares each, valued at almost £36,000 per head, subject to hitting performance targets over the next few years. The company introduced the successful bonus scheme in 2009 and has seen staff turnover drop significantly from 29 percent in 2009 to 17 percent in 2012. It employs around 17,000 staff, but the shares bonus is currently only open to permanent employees, including the 400 at its head office. Ceo Dave Forsey, said: *"I think our staff share bonus scheme has been an absolute game changer since it was introduced in our stores."*

**Half top bosses get no basic pay rise**

Almost half of the bosses of the UK's biggest companies failed to secure a rise in their salaries this year during the 'shareholder spring' move against allegedly excessive boardroom pay. The chief executives of 46 percent of FTSE 100 companies had their basic salary frozen, reported *The Guardian,* citing a **Deloitte Consulting** report. The widespread pay freeze follows sustained pressure from shareholders and politicians. Last year 21 percent of FTSE 100 ceos failed to win a pay rise.

However, some industry leaders continued to receive rises, which lifted the median FTSE 100 ceo pay by 2.4 percent to £856,000. The average amount bosses take home is likely to be some multiple of this figure when bonuses and other incentives are added. A pay survey by corporate governance expert Manifest and Centre member reward consultants **MM&K** recently found average FTSE 100 executive pay rose 12 percent if the other incentives are included. Bob Diamond, the former Barclays ceo, was named as the highest paid boss in 2011 with £20.9m of "realisable remuneration" under new methodology designed to replicate rules being introduced by the government that require companies to publish a single overall figure for executive pay.

While shareholders have spoken out publicly against excessive pay, only two companies in the FTSE 100 had their remuneration reports voted down this year, while seven remuneration reports from quoted companies as a whole were rejected – the most ever. However, Deloitte said the shareholder spring had focussed on a few high profile companies and there had not been an across-the-board shareholder rebellion.

Sir Martin Sorrell, ceo of advertising giant WPP, suffered the biggest revolt in recent years with 60 percent of investors voting against a 30 percent increase in his salary to £1.3m and total reward of £13m. In May Andrew Moss stood down as ceo of insurer Aviva after 54 percent of investors voted down his pay deal. Moss had waived a 4.8 percent pay rise that would have pushed his basic salary through £1m. But a shareholder described the £46,000 waived as a "joke" in view of Moss's total package of almost £5m.

Only five FTSE 100 companies – Aviva, WPP, Royal Bank of Scotland, Royal Dutch Shell and GlaxoSmithKline – have had remuneration reports rejected since pay was subjected to a shareholder vote a decade ago.

Stephen Cahill, author of Deloitte's report, said the restraint shown by remuneration committees was a result of both the shareholder spring and the difficult economic conditions, which have seen many companies struggling to perform. "We are encouraged by lower salary increases and bonus payouts," he said. "This suggests that remuneration committees are taking steps to ensure that the compensation paid to executives is fair and reasonable and linked to the long-term strategy and success of the business." But he said companies should not be awarding executives any pay rises as a matter of course. *"We believe that the starting point for any committee is to consider whether salaries should increase at al, and where increases are awarded they should be limited to those given to other employees, although there are clearly situations where higher increases may be appropriate."* National average pay increases stand at about two percent.

Companies increased the proportion of bonuses paid in shares and deferred shares, which only pay up if the company's performance meets expectations. "There is also a greater focus on the retention of shares and a doubling of the number of companies with clawback arrangements in place (61 percent compared with 36 percent last year) should the bonus turn out not to have been properly earned," added Mr Cahill.

**Govt powerless to stop bonuses for all at MoD**

Civil servants at the **Ministry of Defence** will receive bonuses worth a total £30m despite ministers' attempts to cut the payments. Ninety-six per cent of ministry civil staff will get a 'performance related' bonus for the year 2011-12, an MoD spokesman said. The average award for junior officials is £430, with some receiving up to £860. Senior staff receive larger payments, some worth several thousand pounds. The bonus pot is about a third lower than what was paid out in the previous year, but paying bonuses to civil servants while cutting Armed Forces jobs is a political embarrassment to the Coalition. Defence Secretary Philip Hammond said he had wanted to cut the payments further, but was advised by officials that agreements made by the Labour government meant he was unable to do so. The agreements will be renegotiated for next year, the MoD said, meaning that in future no more than one in five officials qualifies for a performance bonus. Mr Hammond is said to be "determined to make sure only those whose performance is genuinely outstanding are recognised."

**Public sector golden goodbyes**

Hundreds of council executives have received six-figure pay-offs, despite pressure to cut public sector spending, an investigation has found. Redundancy packages of at least £100,000 have been awarded to 450 senior local authority staff in in the last financial year. The biggest pay-off went to Katherine Kerswell, former md of Kent County Council (CC), who left with £589,165, after only 20 months in the job. Other golden goodbyes went to officials who rapidly secured fresh employment elsewhere in the public sector. Ministers have raised concerns over the scale of the payments, and warned councils against their "casual attitude to spending." An investigation by *The Sunday Telegraph* found:

At least 25 officials received a golden goodbye package of more than £200,000, including a director at **Tower Hamlets** - one of London's poorest boroughs; One council gave 36 staff members redundancy pay-offs of more than £100,000 each. The figures were disclosed after councils were ordered for the first time to include the number and cost of exit packages in their annual accounts, which are now published by almost all local authorities. They are far above the legal minimum for statutory redundancy pay. Bob Neill, the local government minister, said: *"These golden goodbyes are deeply concerning. Dipping into the public purse to make such eye-watering pay-offs is unacceptable. Our new transparency rules are forcing these pay-offs into the open, meaning councils must face public scrutiny and account for what in many instances appears to be a very casual attitude to spending public money."*

'Boomerang bosses' - executives who leave with big pay-offs only to return in another public sector position – are especially controversial. Although councils are banned from making staff redundant and then re-employing them in different roles, there is no ban on finding work with *another* council or quango, or being re-employed on a freelance basis, as a consultant. As a result, one ceo took away more than £144,000 for losing his job, only to be hired by another council months later. In another case, a council re-hired its former head of housing as a consultant after she accepted redundancy, while one ceo left with a package of more than £300,000 after being off on long-term sick leave, then started working as a consultant to a quango four months later.

*The Sunday Telegraph* named some of these municipalities: **Lancashire, Glasgow, Staffordshire** and **Hertfordshire** county councils which had some of the highest top-level pay-offs. Lancashire County Council (CC) had 36 members of staff awarded more than £100,000, including two who were given £300,000. The Tory-controlled authority's councillors decided to reduce the number of high-earning officials as part of a cost-cutting programme. They said in the annual accounts that the pay-off figure was the total cost and not the amount received by the employee, as pension contributions were included in the total. Three Glasgow CC executives shared exit packages totalling £1.3m last year, including Tommy McDonald, assistant director of development and regeneration services, who received £586,000, of which £405,000 was in cash and the remaining £181,000 the notional value of years added to his pension. Other large figures include the £239,000 pay-off given to Clair Pyper, 57, the education director at Slough Council at her voluntary redundancy in February this year. An unnamed official at Tower Hamlets, east London, which is making savings of £90m over four years, was given a golden goodbye of £249,000. A spokesman for the Local Government Association said: "Councils have delivered bigger savings than almost any other part of the public sector. They have reduced the local government headcount by 214,000 and sliced £1.4bn from the annual payroll. Ninety per cent of councils have also lowered senior staff costs. There are inevitable short-term costs associated with restructuring on this scale but the overall savings to the public are significant and ongoing."

Matthew Sinclair, ceo of the TaxPayers' Alliance, said the number of council officials given generous redundancy packages was 'shocking': "These extraordinary golden goodbyes are the latest in a long line of excessive taxpayer funded payouts for top council bureaucrats. Local authorities need to scrap the contracts which lead to these six-figure deals as they are terrible value for taxpayers' money and are especially unjustified in the current economic climate," he added.

**City bonus reform from within**

**UBS** intends to cap bankers' bonuses as the firm intends to curb remuneration schemes following regulatory and investor pressure, the *Financial Times* reported. The Zurich-listed banking and wealth management firm is considering a range of options including putting a lid on executives' bonuses either in relation to fixed salary or the bank's net profit, increasing the time for deferred pay to five years and aligning its absolute remuneration level with the average of a peer group, the publication said. It is not yet clear whether the changes will apply to any one specific side of UBS' activities, such as wealth management. Investors and industry commentators have told *WealthBriefing* that they expect more finance houses to increase the performance-measurement period during which executives must wait to receive bonuses from three to five years. Banks such as HSBC have already taken such a step, and others are considering doing so. Controversy about high pay and bonuses has intensified in cases where executives have presided over a bank that has had to be bailed out by the taxpayer, for example. Axel Weber, the former Bundesbank president who joined as UBS chairman four months ago, has travelled across Europe and the US to find investor views about the firm's pay policies, the *FT* said. The ideas for wide-ranging reforms will be debated at board level in the next few months and a final plan will be presented to key investors several months ahead of the agm next May.

**New ruling on tax-free bankers' super bonuses**

The decision of the **Upper Tier Tax Tribunal** (UTTP) to allow an appeal by Swiss banking group giant UBS has proved that executive reward arrangements designed to avoid income tax cannot be defeated by HMRC merely because it circumvents a presumed intention of Parliament or results in the avoidance of a substantial amount of tax, reports David Pett, partner at employee equity specialists **Pett, Franklin & Co. LLP.**

The UTTP considered the cases (heard together in February 2012) of *UBS AG and Deutsche Bank Group Services (UK) Limited vs Commissioners for*

*HMRC*, in which more than £100m of potentially lost tax revenue was at stake. UBS won their appeal, but Deutsche Bank lost theirs on an ownership technicality.

Mr Pett explained: "The decision is of significance in that it confirms that an arrangement deliberately crafted to fall within the scope of clearly worded statutory exemptions, from clearly worded charging provisions, cannot be defeated by HMRC merely because it does not accord with a presumed intention of Parliament or results in the avoidance of a substantial amount of tax."

Both cases concerned complex arrangements established by the banks (and by a number of other large companies) in 2004 with the intention of enabling selected employees to receive, free of income tax and NICs, substantial rewards which would otherwise have been paid as discretionary bonuses."

Although the Upper Tribunal held that where, as in the case of UBS, the scheme had been properly executed it achieved its aim, the legislation had been amended, from May 2004, so as to block the use of such arrangements.

"However, quite apart from the legal niceties, the fact that high earning bankers managed to enjoy large bonuses free of income tax will not go down well with politicians or the general public," said Mr Pett.

In the UBS case, rather than pay cash bonuses, selected employees were invited to acquire shares, intended to be 'restricted securities,' to be taxed under Chapter 2 of Part 7 ITEPA 2003, in a specially-formed company (ESIP) of substantial value. Thus, if the shares acquired were restricted by reason of being subject to a 'risk of forfeiture' then, under s.425, no charges to income tax (and accordingly no charges to NICs) would arise on acquisition. It was further intended that any charge which would otherwise have arisen under s.426, when the shares later ceased to be subject to restriction, was exempted by the application of s.429 on the basis that, *inter alia*, a majority of the shares of that class were not then held for the benefit of (i) employees of ESIP, or (ii) any company associated with ESIP (which UBS would be if ESIP had been under the "control" – per s.416 ICTA 1988 – of UBS) per s.429(4). If both exemptions (first on acquisition of the shares, and on any later chargeable event) applied, the amounts realised by participants would be free of income tax and NICs. The shares in ESIP could then be redeemed for cash chargeable, in the case of UK employees, to CGT.

Earlier, the **First Tier Tribunal** (FTT) held that, in the UBS case, elements of the planning meant that the shares acquired were not restricted securities as the shares were not subject to a risk of forfeiture. Accordingly, the participants fell to be charged to income tax and NICs on the value of the shares when acquired. The FTT did accept that, if the shares had been restricted securities, the structure would have fallen within the scope of the exemption in s.429. In the Deutsche Bank case (heard at around the same time and by the same First Tier Tribunal) the scheme was broadly similar to that established by UBS save that the shares were held to be properly regarded as forfeitable securities and that the relevant conditions for relief under s.429 (as it then applied) had been satisfied. However, the FTT went on to state that: *"On the actual facts found in this decision, the Tribunal does not consider that Parliament intended to provide the double exemption from income tax for DB employees ... claimed by [DB]. The Tribunal therefore finds that ... the scheme is not within Chapter 2 of Part 7.*"

**"**In our view, and that of many other commentators, this appeared to involve a leap of reasoning. Nowhere in either decision of the FTT was there a clear explanation of why, or on what basis, the Tribunal could disregard the application of the clear statutory provisions to the actual facts (having found that the steps taken were not shams) simply because either the purpose of the scheme as a whole was wholly tax avoidance, or the result would not accord with what the Tribunal considered to be the intention of Parliament in enacting Part 7 of ITEPA," said Mr Pett.

Regarding the Deutsche Bank scheme, the UTT confirmed that the FTT had been entitled to find that the shares concerned were restricted securities within the meaning of Chapter 2. However, as whether the exemption in s.429 applied, the key issue (as in the UBS case) was whether, immediately before the chargeable event, DB was an associated company of the special purpose company whose shares were the subject of the scheme. This in turn depended upon whether DB in fact exercised control at shareholder level over that company, despite the fact that DB was only a minority shareholder. The FTT had found that Investec was not involved in the scheme apart from its professional services fee and that it never exercised any independent discretion regarding the scheme, which was pre-ordained in all material respects. It followed that the exemption under s.429 was not available and DB's appeal was dismissed. *But for this 'control' issue, its appeal would have succeeded.*

"Given the sums and principles involved, further appeals are likely," warned Mr Pett.

**French government milks UK trusts, continued**

The new French reporting rules for trusts finally came into force on September 15 2012, said Centre member **Clifford Chance**. The scope of the new reporting requirements is very broad and, as things stand, employee benefit trusts (EBTs) are subject to these reporting requirements if they include French tax-resident employees within the class of beneficiaries or hold French assets (such as shares in a French company, French real estate properties, etc). The initial report had to be made **no later than September 30 2012**. The French tax authorities are aware that the new reporting requirements may give rise to practical difficulties for EBTs and they have been considering for some months whether to exempt EBTs from the reporting requirements. The French have said informally that the current draft of their long-awaited official guidelines included an EBT exemption but they would not confirm when the guidelines would be published or the precise scope of the exemption. At the time of going to Press, it remained uncertain whether the published version of the guidelines would include an EBT exemption and, if so, how far it would go. For the time being, the trustees of EBTs should be prepared to make reports to the French tax authorities by the end of September unless EBTs are exempted.

Trustees of a trust have to comply with the reporting requirements if either (1) the settlor or at least one of the beneficiaries is a French tax resident or (2) the trust holds an asset or right located in France. Many EBTs will include French tax resident employees within the class of beneficiaries and will be caught by the new regime, even if the company that established the EBT is not a French tax resident company and the EBT does not hold any French assets. The reporting requirements will in principle also apply to UK SIP trusts if they have a French tax resident settlor company.

There are two separate reporting requirements, only one of which has a September 30 2012 deadline:

*A report of the fair market value as at January 1 2012 of the assets or rights held by the trust – the deadline is September 30 2012. (As from 2013, the fair market value of the assets or rights held by the trust as at January 1 of a given year will have to be disclosed no later than 15 June of that year).

*A report of the setting up, termination or modification of a trust - the deadline is December 31 2012. (As from January 2013, these events will have to be disclosed within one month of an event).

For the purpose of this reporting obligation, 'modification of the trust' is extremely wide and includes any change in its terms, operation, settlor, class of beneficiaries, trustee or, the transfer or removal of assets or rights. "This broad definition of 'modification' would be fairly unworkable for EBTs as it would seem to require reports to be made whenever shares or assets were moved into or out of an EBT, for example. We would hope to have helpful guidance from the French tax authorities well before the December 2012 deadline," added Clifford Chance.

For both reporting requirements, tax residence of beneficiaries and/or assets is assessed each year on January 1.

A failure by the trustees to comply with the reporting requirements triggers a penalty of € 10,000 or, if higher, five percent of the value of all of the assets held in the trust. The settlor and beneficiaries are jointly liable with the trustee for payment of the penalty. The report due by September 30 can (but does not have to be) be made by filing a specific form published by the French tax authorities, the French version which should be addressed to the *Direction des résidents à l'étranger et des services généraux* (DRESG), 10 rue du Centre, 93465 Noisy-Le-Grand Cedex, France.

**Switzerland**'s data protection watchdog has told Swiss banks to stop handing over transaction information to the US tax authorities after fears that the shared records contained the names of client advisers and other bank employees. Speaking to the German-language newspaper, *Tages Anzeiger*, data commissioner Hanspeter Thür said that he had written to several banks to find out what data had already been transferred to the US Department of Justice (DoJ). "We have informed them that we are opening an analysis to verify the legality of the data transmitted to the US," Thür told the paper. "Until we have the results we have demanded that no further bank employee data be sent to the US, unless against an employee in a criminal case." The Swiss Government authorised some banks to transfer records last April after the US threatened to open criminal proceedings against them, according to news website SwissInfo. That data was supposed to have been encoded to protect the identity of individuals working for the banks, who have said that they are now at risk of criminal prosecution in the US for aiding and abetting tax evasion. Thür said that the data commissioner's office was not made aware of the arrangement between the Swiss Government and the US authorities, and only became aware when it received complaints from bank employees asking about their legal options. Last month, the commissioner's office wrote to the Swiss Bankers' Association and Private Bankers' Association setting out information-sharing restrictions under the country's data protection laws.

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