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it's our business

newspad of the Employee Share Ownership Centre

Backlash over huge reward rise for top directors

Total remuneration received by directors of FTSE 100 companies during the last financial year (ended April 2007) surged through the £1bn mark for the first time, reported the Guardian newspaper. Average boardroom pay at the UK's top companies soared 37 percent as full-time directors were rewarded with inflation-busting increases in basic salaries, cash bonuses and substantial payouts from executive share schemes. This huge increase was more than 11 times the increase in national earnings and nearly 20 times the official rate of inflation. The new average total pay for a chief executive is £2,875,000. The ratio between bosses' rewards and employees' pay has risen to 98:1, up from 93:1 a year ago -implying that the work of a chief executive is valued almost 100 times more highly than that of their employees. The figures were revealed in the Guardian's annual survey of executive pay at the 100 biggest companies, conducted jointly with the pay consultancy Reward Technology Forum. In the previous year top directors' pay climbed 28 percent, following annual average rises of 16 percent and 13 percent before that. TUC general secretary Brendan Barber claimed top directors were "losing touch with reality" and described the disparity in rewards as "morally offensive." Topping the league of FTSE 100 directors' pay was Bob Diamond, head of the investment banking arm of Barclays Bank who earned £23m last year. Mr Diamond earned a basic salary of only £250,000, but his package was magnified nearly 100-fold as a result of a performance bonus of £10m and about £12m in share awards. Three other top earners earned eight-figure salaries. They include Bart Becht, ceo of Reckitt Benckiser and Giles Thorley, boss of the Punch Taverns pubs group. Their pay last year was £22m and £11m respectively. Lord Browne, the former ceo of BP, received £11m. Part-time chairmen of top companies now earn an average of £311,000, up 15 percent on a year ago.

The highest paid woman - with a pay package of £2.1m was again Dame Marjorie Scardino, ceo of Pearson, publisher of the Financial Times. She and Dorothy Thompson of the Drax power station company were the only two female ceos in the survey period. There were only 16 female full-time executive directors of FTSE 100 companies, out of 527 such posts. Basic boardroom salaries went up just five percent, but when cash bonuses and other benefits, are added, the average increase was 13 percent. However, it was stock market gains that provided the bumper returns from executive share plans. During the three years ending June, the FTSE 100 soared by 48 percent from 4,464. Despite the recent stock market turmoil, share prices are still way higher than they were when many share options were awarded in recent years.

Some 1,389 directors served on the boards of companies surveyed. Of these, 249 received salaries, bonuses and benefits collectively worth more than £1m. If the gains from long-term share-based incentive plans are included, 337 directors of FTSE100 companies are in the £1m a year + bracket. Mr Barber said: "It is impossible to believe that top directors have become so much more productive than the rest of their staff over the last year. This growing gap is not just morally offensive but hits workforce morale, feeds through into house price inflation and threatens social cohesion. Britain's boardrooms are slowly losing touch with reality." Miles Templeman, Institute of Directors director general, said: "Exceptional performance should be rewarded" and pointed out that pension funds would benefit from a rising stock market. However, it was important that people did not believe that all company directors were rewarded in the same way as FTSE 100 bosses. Meanwhile, workers' salaries are picking up, a separate survey shows. Permanent staff pay is rising at its fastest pace for nine years, the Recruitment and Employment Federation and KPMG said.

From the Chairman

We can expect the proverbial to hit the fan next year when bosses' rewards hit the magic ratio of 100:1 compared with average workers' rewards.

Numerically it may not be much more than the 98.1 times at which it currently stands but psychologically the round number is all.

The case for the rewards of Bart Becht of Reckitt Benckiser is clear from the share price but many of the rest will have a case to make, as well as their advisers who are complicit in the disconnection.

The lesson for Brendan Barber at the TUC may be—time to employ better advisers and link workers' pay to ceo rewards. Who could object to that?

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IHT trap for EBT cash

Many businessmen who have paid cash into Employee Benefit Trusts will be shocked to learn that they will now be getting substantial Inheritance Tax demands from HM Customs & Excise. The 'Revenue' is now targeting individuals who have more than five percent shareholdings in closely controlled companies, following a ruling by HRMC Solicitor's Office about the application of Section 12 of the 1984 Inheritance Tax Act. Those apparently caught in the new Revenue arm lock have either used company cash to help finance a succession solution via an EBT, or have used EBTs for cash bonus planning. In the latter case, funds have been channelled by way of loans, rather than paid out as taxable cash bonuses. "There are a significant number of cases involved and the amounts in question are large," said Centre member Graeme Nuttall, partner at Field Fisher Waterhouse, who unearthed the IHT threat while talking to the Capital Taxes office in Edinburgh.

"There has always been a risk that IHT could apply when a closely controlled company made a cash gift to an EBT. Basically, a closely controlled company is one under the control of five or fewer shareholders. As an anti-avoidance provision, the IHT regime covers gifts by close companies. This prevents individuals avoiding IHT by making gifts via companies they control," added Mr Nuttall, legal adviser to the Employee Ownership Association. It had been thought that Section 12 provided an exemption, because it says that there is no IHT liability if a gift made by a company is tax deductible for corporation tax purposes. Before the Finance Act 2003 restrictions applied, it was possible, under case law, to get tax deductions for contributions to EBTs and, in particular, where the EBTs created genuine employee ownership arrangements. But since late 2002 there had been severe restrictions on getting a tax deduction for contributions to an EBT (unless relief under the Employee Share Schemes Act 2002 is available). Capital Taxes have confirmed that there can be no "wait and see" in relation to Section 12 and so it will now raise IHT assessments on a number of pending cases, going back several years. It is expected that taxpayers will appeal against these assessments. The rate of IHT on lifetime gifts is 20 percent. If cash contributions are used to acquire shares which are held permanently in an EBT then the Finance Act 2003 conditions will never be satisfied.

Eagle's Eso brief

Angela Eagle, Exchequer Secretary to the Treasury and MP for Wallasey, is the minister who has direct responsibility for Eso in Gordon Brown's reshuffled government. She read PPE at Oxford and worked for the CoHSE union (now UNISON) before being elected to Parliament. Eso falls within the Treasury's 'Enterprise and Productivity' division. She will oversee small business taxation and support the Chancellor on economic reform; competition and better regulation. Her brief also covers strategic oversight of the UK tax system, including direct, indirect, business and personal taxation. The minister with overall responsibility for HMRC is fellow Liverpudlian and ex care assistant Jane Kennedy MP, Financial Secretary to the Treasury.

EMI threat in holding companies beaten off

A government threat to stop more than 100 small companies participating in the successful Enterprise Management Incentive scheme has been beaten off after determined industry opposition, newspad has learned. HMRC (formerly the Revenue) began piling on the pressure during talks about the impact of the 2007 Budget rules on the EMI scheme and the implications for IPO based companies that had inserted a holding company into their structures. However, executives in such holding companies will still be allowed to qualify for Enterprise Management Incentive awards after a late concession by HMRC. "HMRC threatened to close down operation of the scheme for a lot of IP-based companies where a holding company was inserted, but we got that problem removed," said one insider. "Where further EMI options are being granted, since most of these companies are specially established holding companies, they will have been relieved by a late concession by the Revenue."

Eso rumpus in South Africa

'Black empowerment,' the government policy aimed at spreading wealth more widely in South Africa, is being distorted in the Eso sector, according to the newspaper *'Business Day'*. It is calling for fairer distribution of shares and options to all employees in SA, rather than: "dishing out shares at a discount to black business people who often are not only rich already, but have little or no interest in the company." The editorial accused the government of hindering genuine mass employee share ownership - ministers seemed "reluctant to accept that an Eso programme can be just as legitimate an empowerment deal as a transaction involving members of the black elite." The ministries had capped the number of points winnable by companies which had installed broad-based Esos to just eight points out of 20 on their *black empowerment* scorecards and this had forced many companies to restrict access to their Eso programmes to executives and managers only, added *Business Day.* However two big unions and mine employers, who were trying to resolve a wages strike, have got together to demand that all-employee Eso deals should be awarded far more black empowerment points in future than hitherto. "The agreement is remarkable because it's the first time a demand for Esops has come up in a collective bargaining context in South Africa," added the editorial. Trade unions had been traditionally very suspicious of linking Esops and pay and conditions negotiations with employers. Our thanks to SA member Theo van Wyck. of Remgro for alerting us to this development.

Increased SAYE bonus rates

HMRC has announced increased bonus rates for the new September 2007 SAYE prospectus, reports Paul Stoddart of HBOS Employee Equity Solutions. The new rates are:

Years	Monthly Contributions	AER %
3	2.4	4.23 up from 3.19
5	7.2	4.40 up from 3.46
7	13.3	4.46 up from 3.52

**AER (Annual Equivalent Rate) is a notional rate that illustrates what the annual rate of interest would be if the interest were compounded each time it was paid.*

The early repayment interest rate has been increased from two percent to three percent. Participating employees may decide to buy extra shares with their raised bonuses. About 550,000 employees were awarded SAYE-Sharesave options during the fiscal year ended April 5 and the average value of each new holding (annualized) was about £4,000. The new prospectus came into effect from 1 September (the September 2006 prospectus was withdrawn on 31 August).

HBOS employee shareholders received £80m in free shares on August 7. In all, the banking group has awarded £218m in free shares to employees since 2005. This latest award takes the total value of shares held by HBOS employees and ex-employees in all current plans and share options to almost £490m.

EMPLOYEE INCENTIVES IN BIOTECHS

Shareholder dilution limits in some employee equity schemes used by small biotech companies are higher than the Association of British Insurers guideline of ten percent, a survey has revealed. Documentation and/or prospectuses issued by biotech companies in connection with listing requirements shows that some companies are prepared to incentivise their employees using equity – collectively worth up to 15 percent of the company. Nicholas Stretch, employee share schemes partner at CMS Cameron McKenna, revealed the dilution moves in a survey published by *Mondaq Business Briefing*, covering documents issued in the first half of this year. There were no main list IPOs in this period and only three admissions were true IPOs - companies entering quoted markets for the first time. These were Neuropharm (which is developing drugs for developmental and degenerative disorders), Epistem (which is commercialising adult stem cell research) and China Medical System Holdings. These companies are heavy users of share options, whereas many listed companies are moving towards free share awards.

COMPANIES

The chairman and ceo of **Debenhams** have bought in total of 250,000 ords in the departmental store group to help underpin its faltering share price, well below its May flotation price of 195p last year. Top directors at **Barclays**, including chairman Marcus Agius and President Robert Diamond, spent £6m buying shares in the U.K. banking group before it launched its share buyback programme. Computer maker **Dell** said it would reduce more than four years' worth of earnings by up to $150m after an internal probe found the company misled its auditors and manipulated results in order to meet performance goals. The largest reductions in quarterly profits are expected to be in the first quarter of fiscal 2003 and the second quarter of 2004, each reduced by ten to 13 percent. It will restate all of fiscal years 2003-06 and the first quarter of 2007, in total. The investigation, which began in August last year and evaluated five million documents: "Found evidence that certain adjustments appear to have been motivated by the objective of attaining financial targets, particularly at the end of year quarters," Dell said. The Securities and Exchange Commission's investigation into aspects of Dell's accounting and financial reporting practices is ongoing. The company said that executives, whom it did not name, had transferred excess accruals from one liability account to another and used excess balances "to offset unrelated expenses in later periods." Unspecified numbers of sackings, re-assignments, reprimands, increased supervision, training and financial penalties either have or will be taken as a result, admitted Dell. **Lipoxen plc**, a biopharmaceutical company specialising in the development of biological products, vaccines and oncology drugs, announced that finance director Colin Hill had been awarded 400,000 share options exercisable at a price of 48p per share, half of which vested immediately and the rest vesting July 31 next year.

ESOP EXCHANGE

Hurlstons, which manages the Centre, is developing a website to help rescue companies near insolvency which could be saved if employees exchanged rights for equity. The website is expected to start during the month of September. Members wishing to participate should express interest to sround@hurlstons.com.

ESOP INSTITUTE

The new term of the Esop Institute starts on October 29. Enquiries about enrolment in the world-leading online course should be made to the Registrar, registrar@esopinstitute.com. The four modules cover Esop history, law, tax and administration.

CONFERENCES

Centre – IoD October 9: The speakers at the joint Centre – Institute of Directors share schemes conference for SMEs at One Whitehall Place, SW1, on Tuesday October 9 will be: Justin Cooper of Capita Registrars; David Craddock of David Craddock Consultancy Services, Juliet Halfhead of Deloitte, Alan Page of Killik Employee Share Services, Michael Sterchi of KPMG, Sara Cohen of Lewis Silkin, Aidan Langley of PWC, Robert Postlethwaite of Postlethwaite Solicitors and Colin Gibson plus Jim Taylor of HMRC share schemes valuation division. This conference regularly attracts 100 delegates, mainly from unlisted companies planning to set up Esos. Admission costs £360 + VAT per head for Centre and IoD members and £460 + VAT for non-members. Register your delegates now by email: events@iod.com (please tell the IoD's events department that you are a Centre member)

Centre – STEP Guernsey November 9: Speakers at the joint Society of Trusts & Estates Practitioners/Eso Centre share schemes for trustees conference to be held in Old Government House Hotel, St Peter Port, Guernsey, on Friday November 9 are: Charles Cooper of BWCI Trust Co, Amanda Flint of Chiltern Reward, William Franklin of Pinsent Masons, Catherine Gannon of Gannons (employment lawyers); Alison MacKrill of Turcan Connell, who is chairman of STEP Guernsey, David Craddock (see above) and a speaker from Lane, Clark & Peacock LLP. The agenda includes trustee issues, such as, presentations on internal share markets for SMEs, employee share plan administration, evidence for the success of Eso and revised regulations on share-based payments affecting Esos and EBTs. Admission prices are £295 +VAT for STEP or Centre members (discount for 2nd and subsequent delegates) and £425 + VAT for non-members. Register on the Centre website at: www.hurlstons.com/esop and click on 'events'.

it's our business - Europe

Davos Jan 30–Feb 1, 2008: Speakers at the European Centre's ninth global employee equity forum in Davos include: Grant Barbour of Bedell Trustees Group, Peter Mossop of Capita Fiduciary Group, Michael Sterchi of KPMG; David Pett of Pinsent Masons, Paul Stoddart of HBOS Employee Equity Solutions, Nadine Weber of Richemont and Mahesh Varia of Travers Smith. The Centre seeks more speakers and topics for this prestigious event, which takes place in the five-star Steigenberger Belvedere Hotel, Davos Platz, from early evening Wednesday (Jan 30) until Friday noon (Feb 1). Speakers obtain a £200 attendance price discount. Please email Fred Hackworth at fhackworth@hurlstons.com if you and/or a colleague would like to speak at this event. Delegates' package deal bed nights in the Belvedere will be Jan 30 and Jan 31. Member practitioner delegates will pay £775 for the all-in (except travel) package deal, while non-member practitioners will each pay £995. Exceptionally, Centre member plan issuer delegates will pay only £275 for their accommodation + conference package deal. Return tickets from London to Zurich can be booked for less than £100, using member BA's website www.ba.com The discounted room rates are available to delegates who arrive earlier and/or depart later.

Cannes June 4-6, 2008 special offer: Rooms with a sea view will be allocated to the first 15 members to register by email to fhackworth@hurlstons.com for the European Centre's 20th anniversary employee equity conference in Cannes next year.

The Centre website - www.hurlstons.com/esop - carries more details.

German options deductible at exercise

The German Federal Supreme Tax Court ruled on May 3 that expenses incurred by an employee in relation to stock options are first deductible at the time of exercise and where the options are not exercised (when the options are underwater), any expenses incurred can be deducted as employment-related expenses in the year in which the stock options expire, reported **Deloitte**.

Auchan launched its first financial participation plan (Eso) 30 years ago in order to allow each staff member to become a part owner his/her job and to contribute to improved results in the business. 'L'actionnariat salarié' is now one of the pillars of its employee relationships. Auchan has installed Esos for hypermarket staff in France, Spain, Luxembourg, Portugal, Poland, Hungary, Italy and even China, where it launched an Eso scheme earlier this year and for staff at Banque Accord. Auchan said that its Eso was intended to develop confidence between employees and the business. It allowed employees to create individual long-term savings accounts, which grew as the business prospered. About 110,000 staff participants hold 13.5 percent of the group's capital.

In its latest Eso plan, French reinsurer **Axa Group** said it will issue new shares to be offered to more than 100,000 current and former employees. Shareplan 2007 is launching in 37 countries where Axa has a presence. Those participating will be able to take part in both parts of the offer, a 'classic share offer' and a 'leveraged offer.' Eligible employees include those at with least a three-month contract at one of the various Axa subsidiaries. Ex-employees who have taken early retirement and who have not invested in an employee stock purchase plan can also take part. The maximum number of new shares issued will be 65.5m, equalling a capital increase of £102m. The subscription period runs from Sept.24 to Oct.9.

Employees and management at **Erste Bank** – the 2nd biggest Austrian bank - bought 12,000 new shares under its management option programme, launched two years ago. Shares purchased under the programme must be held for at least one year. Since the IPO in 1997 Erste Bank has continued to expand Eso, with employee shares offered yearly, as approved by the AGM. Shares purchased under the scheme are made available through a capital increase. Employees and management of Erste Bank currently hold around three percent of the company equity.

Ryanair has spent €37.6m increasing its stake in Aer Lingus to 28 percent. The budget airline, led by Michael O'Leary, bought 16m shares at €2.35 each from an unnamed seller. This makes Ryanair the biggest shareholder in Aer Lingus, ahead of the government, which has a 25 percent stake and the employee share ownership trust (Esot), which owns 12.6 percent. The Esot questioned the legal basis of the Aer Lingus decision to transfer its Heathrow operating slots from Shannon Airport to Belfast and did not rule out backing a call for the decision to be reversed.

Societe Generale has updated its global employee share ownership plan by increasing its capital by almost €500m, thereby creating 4.58m shares for employee participants. Soc Gen's annual Eso programme ran from May 15 to June 1, but the shareholder dilution effect was neutral, being fully offset by a buy-back, followed by a cancellation, said the bank. Some 15,000 employees were able to subscribe for the first time. The plan has a 60 percent participation rate among 125,000 employees worldwide and an 80 percent participation rate in France. Staff bought the shares at €109 each. Subscription rates rose in 47 of 52 participating countries. The average holding among Societe Generale French employees is about £50,000. More than 74,000 current and former employees collectively hold 7.5 percent of the bank's equity. It has one of the highest Eso equity holding rates in the French CAC40. On average during the past five years, 20,000 employees/former employs have cashed in shares generating average annual profits of £9,000 per head.

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