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it's our business

newspad of the Employee Share Ownership Centre

Centre urges ministers to promote broad-based Eso on wider scale

The Centre has launched an autumn campaign, aimed at convincing ministers that they should back the expansion of broad-based employee share ownership throughout UK businesses, whether quoted or privately held.

The 'hearts and minds' campaign being waged in Whitehall is progressing on two broad fronts:

- The Centre's responses, on behalf of members, to the industry changes proposed by the Office of Tax Simplification (OTS), notably the threat to the future of the tax-approved Company Share Option Plan (CSOP)
- The Centre's responses to the wider Eso issues raised by the conclusions of the Nuttall Review report, now being studied by employment affairs minister Norman Lamb.

In both cases, the proposals are subject to consultation exercises due to end shortly *(see inside pages)*

Concerns are mounting that the powerful case for extending government support to all-employee share ownership in UK *quoted* companies, particularly those at the smaller end of the spectrum, is going by default.

While leading EU institutions, such as the Parliament and the Economic & Social Committee, are training their guns on the promotion of broad-based employee share ownership in member states across the board, Coalition ministers, mostly Lib-Dems, are focussing primarily on how to help employees to take control of hundreds more privately held companies for which they work.

However, an internal survey of member attitudes has handed the Centre ammunition with which to help convince ministers that CSOPS should be retained within the lexicon of tax approved employee share schemes.

Already, *Employee Benefits,* the trade press magazine, has highlighted the Centre's survey, which revealed that every member who responded wants to retain the CSOP. This still popular all-employee scheme allows a company to grant each employee tax-approved options over shares worth up to £30,000. No discount can be given to the market value of the shares, but if the share price is higher than the option price after a minimum three years, the employee gets the gain and is only liable to Capital Gains Tax, but not Income Tax, subject to the £10,100 annual exemption for individuals. The CSOP is often used by companies who wish to offer participation to all employees, including part-timers, and those on low wages who would find it difficult to save to buy company shares (as with Sharesave or Share Incentive Plan). The advantage for the company is that it can decide on the number of shares over which the options are granted for any given employee whereas under ShareSave, the employee decides the level of savings. Employees can use a loan arrangement to fund the purchase of the shares under option if they cannot afford them and repay through the proceeds (a cashless exercise).

Centre chairman Malcolm Hurlston said: "The CSOP is the single share plan relevant to part-timers and the low paid. It is a bridge to a less divisive society and needs ministers to shout its virtues from the rooftops."

The Centre survey follows the OTS review of tax approved Eso schemes and HMRC's consultation on the future of the CSOP, which implied that it could be abolished. There has been a fall in its use in recent years for three reasons:

* Economic recovery has not kicked in yet and CSOP

From the Chairman

"Only connect" was EM Forster's cure. Let's make it "only coalesce" for our government of the day. So much is going on in our sector but little evidence of an overarching plan. Time for a Parliamentary Question perhaps about how often the ministers meet. So many good things are going on; so many strong possibilities; so many good intentions (but we know the road they paved). Of course by the time you read this there may be new ministers (Ken Clarke back?) He was an awful Esop minister but the best Chancellor since the war, Gordon Brown was the best Esop chancellor. Meanwhile let's save the CSOP and give hope to the low paid - the forgotten people in modern society since they are neither the hard-voting squeezed middle nor the unemployed.

Malcolm Hurlston

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 fax: 080 8280 1938 e-mail: esop@hurlstons.com
www.esopcentre.com

works best when companies see growth opportunities ahead, so companies are holding back, but this should be an incentive to keep it, rather than abolishing it now.
* The introduction of the accounting standard IFRS2 had a detrimental effect on CSOP usage. Whereas previously there was no accounting expense for full-cost options, from 2006 onwards they had to be expensed in full even when, at maturity, options remained unexercised in depressed share markets.
* The CSOP's options value tax-approved limit has been frozen at £30,000 for many years, thus steadily reducing its attraction as a lower management, as well as an all-employee, incentive tool.
The number of live CSOP plans declined sharply from 2,150 in 2008-09 to 1,910 in 2009-10 continuing the downward trend seen in recent years. These 1,910 plans were held by 1,490 companies, as some companies operate more than one CSOP scheme. At the peak in 2000-01 there were 5,170 live CSOP plans operated by 4,270 companies, said ONS. The estimated cost to the Treasury of CSOP income tax and NICs relief fell to just **£60m** in 2009-10, compared to **£190m** in 2006-07. Nor do these figures take into account the extra revenue gained by the Treasury from those employee shareholders who pay CGT on their gains. So it has hardly been a drain on taxpayer resources.
Furthermore, CSOP is not the only approved Eso scheme to have felt the heat of recession. The number of live SAYE-Sharesave plans declined to 720 in 2009-10 from 800 in 2008-09 and from a peak of 1,320 live SAYE plans in 2000-1. The number of new Share Incentive Plans (SIP) launched in 2009-10 (the last year for which the stats are available) fell slightly from 890 to 860 and even the number of companies granting options under the enormously successful Enterprise Management Incentive (EMI) scheme fell by 14 percent to 2,190 in 2009-10 from 2,560 in 2008-09, even though the total number of UK companies to have used EMI since its inception rose slightly to 10,610 in 2009-10 compared to the previous year.
Mike Landon of MM&K, and Centre steering committee member, said: " More companies use CSOP than any other approved share scheme and therefore it should not be scrapped. Many companies cannot use the alternatives of SIP or SAYE because these can be costly and cumbersome to administer and contain too many detailed provisions - including a requirement to make offers to all employees on the same terms. Only the smallest companies can offer EMI options, and then these are not permitted for certain excluded activities. The reasons for CSOP's decline in popularity over the last 10-15 years have been largely the same as the reasons why share options have been used less often - the introduction of an accounting expense for share options (where previously share awards incurred an accounting expense but market-value share options did not) and falling share prices. The freezing of the limit at £30,000 has made CSOPs less relevant to many companies too. In my view, no further tax incentives are necessary to encourage companies to extend share participation to top executives in the biggest companies. They do this already - some would argue excessively."
Mr Landon added: "However, it is important to provide greater motivation for middle and lower ranked employees in all companies and senior executives in those small and medium sized companies which do not qualify for EMI. CSOP is ideal for this. If the Government genuinely wants to extend employee ownership (as suggested by its enthusiastic response to the Nuttall report), the answer should be to make the CSOP even more flexible. In particular, two advantages of EMI could be extended to the CSOP - allowing options to be granted at a discount or at nil-cost (but only giving income tax relief for share price increases over the market value at grant) and allowing tax-relieved exercise immediately after the grant date. The latter would mean that the early exercise provisions, for leavers and company events, would not need to be included in the tax legislation. This would be consistent with the general movement in market practice away from share options and towards share awards. Given the Government's current budgetary constraints, I do not think there is any need to increase the £30,000 limit at this stage. However, it could be simplified to £10,000 per year or £30,000 for grants over any rolling 3-year period."
The Centre is extending the ministerial lobbying campaign to include the Nuttall Review (named after its originator – Centre member Graeme Nuttall, partner at Field Fisher Waterhouse). As part of its response to Nuttall, the Centre will tell Business Secretary Vince Cable that it would be unhealthy for the future of employee share ownership if ministers concentrated their efforts solely or largely on the 25 percent plus employee ownership model suggested in the review.
Mr Hurlston will tell Mr Cable that Centre members prefer a *Softly, softly* approach in which all-employee share ownership is introduced and/or extended gradually within the workforce over many years.
The chairman will ask the government to help organisations like the Centre build and provide impartial employee share ownership information packs for use by employees in companies in which the Eso concept does not yet exist.
The Centre fears that a *Right To Request* – a central plank of the Nuttall Review - which would allow employees, under certain conditions, to ask their employers to install employee share ownership within the business could backfire. Such a right, were it installed, might be sabotaged by fearful employers determined to resist the 25 percent + employee ownership target.
UK employee share ownership penetration levels vary widely, depending upon the size and type of the business: in the banking & finance sector, the percentage of equity held by employees often lies between six and eight percent; in multinational manufacturing companies it is frequently between three and six percent and in high

tech SMEs, employees can hold ten percent or more of the equity. However, in smaller quoted companies, broad-based Eso schemes are few and far between.
To illustrate the point: 12,500 UK companies used one or more approved employee share schemes in 2009-10 and of these 10,610 were in the EMI sector, where very few of the user companies are quoted, because mostly they are too small.
It is clear therefore, that – for example - many of the 1060 companies listed on AIM, the LSE junior stock market market, do not use an HMRC approved employee share scheme of any kind at present. To these must be added several hundred main LSE market companies who are currently without an approved employee share scheme either. It is in ***this*** sector that the Centre wants ministers to place more emphasis – for example by helping the Centre to encourage such companies to install tax-approved all-employee share schemes.
While the Centre supports *Right To Request* in principle, it does not want this to become prescriptive, though business owners should have very good transparent reasons for turning down such requests from employees. However, the burden imposed upon the company by *Right To Request* should be limited to making available sufficient information to a representative group of employees so that they would be able to build their case for employee ownership, the Centre will say.
The Centre will tell ministers that it is ready to prepare and make available to companies – perhaps through the new Employee Ownership Institute - various papers and other informative materials about employee share ownership schemes and how to install and operate them.

Annual statistics on employee share schemes delayed
HMRC announced without warning that a major revision is under way of national statistics about the four tax-approved employee share schemes.
A new methodology is being used to compile and assess the 2010-11 statistics and the previous statistics for 2007-08 to 2009-10 will be revised to provide a consistent time series for users, HMRC said on its website.
Consequently, publication of the normal annual update of statistics for SAYE-Sharesave, CSOP, SIP and EMI, due more than a month ago, will now be delayed until further notice, HMRC warned on its website.
Reading between the lines, major revisions can be expected to previous statistics on the take up of these share schemes by companies and individiuals and the tax reliefs they incur.
“We have been reviewing the validation and data cleaning carried out on the Employee Share Schemes Statistics, and as a result of the review will be changing the way the data is cleaned and validated to improve the accuracy of the data,” said HMRC.

RTI reporting warning
HMRC is implementing a brand new PAYE reporting system known as ‘real time information’ (RTI). Under RTI, the general rule is that all employers must send a detailed information return to HMRC every time a payment is made to an employee. This means that companies will need to send an information return to HMRC on (or before) every payroll date (usually every month, but possibly weekly or fortnightly for some companies), warned Centre member **Clifford Chance.** However, in practice not all payments are made on the normal payroll date. For example share awards can vest, or options can be exercised, on some date other than the normal payroll date. In these cases it would be extremely difficult for employers to fulfil the timing requirements of RTI. After much lobbying, HMRC has agreed to an exception from the general rule for employee share plans.
In the case of employee share plans the return will not have to be submitted to HMRC until the 19th of the tax month that follows the tax month in which the relevant event occurs.
It will be extremely important for employers to ensure that they meet the relevant RTI reporting deadlines (for both cash payments and share plans) as HMRC is proposing to bring into force penalty regimes for both inaccurate RTI returns and late RTI returns. One of the reasons for the introduction of RTI is so that it will be easier (and quicker) for HMRC to determine whether or not it needs to charge penalties for late in-year payments of PAYE. With this in mind, HMRC is consulting on a number of changes to the existing penalty regime for late in-year payments of PAYE. The RTI regulations have already been brought into force, but currently only apply to employers who are taking part in a HMRC RTI pilot scheme. *However, most employers will be required to comply with RTI from April 2013 and from October 2013 it will be compulsory for all employers.*

Taxation of unapproved share plans
The Office of Tax Simplification (OTS) published an “encouraging” interim report on how best government could reduce the barriers facing companies that want to introduce or continue operating unapproved share plans, as viewed by Centre member **Deloitte**. The OTS review extends to co
mmonly used types of unapproved plan as well as more ad hoc arrangements. The fact-finding stage has been intended to help the OTS establish a full and complete picture of the issues faced by businesses using unapproved arrangements, said Centre member **Pinsent Masons**. The interim report asked businesses and stakeholders for further information, which it will use to devise recommendations for the Government on how to make it easier for employees to introduce and run such schemes. “Many businesses have told us that [unapproved] arrangements are important in aligning employee reward with how the business is doing and help with staff retention,” said John Whiting, OTS Tax Director. “At the same time, they regularly cite technical difficulties or administrative burdens. We will now start to look for solutions to facilitate use, and will put forward common sense recommendations in due course.” The report would, he said, enable the OTS to

have a "full and complete picture of the arrangements businesses use and the issues they encounter".
It identified the following as the key challenges faced by companies operating unapproved share plans:
Listed/all companies
- Meeting PAYE deadlines/avoiding penalties and deadlines
- Managing internationally mobile employees
- Form 42 (share plan reporting)
- Disguised remuneration (impact on EBTs)
- Employment related securities legislation (identification of restricted securities)

Private companies
- Valuation of private company shares
- Employee benefit trusts (inheritance tax and loans to close company participators)
- Identifying shares subject to PAYE (readily convertible assets)

In section two of its report, the OTS requests further input by **October 26** on the key issues identified in the report. The OTS plans to publish its final report before the 2013 Budget.
Deloitte said: "It is encouraging to see the OTS interim report identifying a number of issues which we know continue to be high on the agenda of many companies. We would encourage companies to respond to the OTS' invitation to give further feedback and, in particular, to provide real life examples of difficulties they face in practice."
Mike Landon of MM & K, the Centre's representative on the OTS committee, said: "The interim report identified eight "key areas of complexity" for unapproved share plans, summarised in Section 3.34 and explained in more detail in Chapters 5 and 6. The report has successfully identified most of the difficulties which companies encounter in relation to unapproved share plans. One exception is that (under Part 12 of the Corporation Tax Act 2012), corporation tax relief is not available where the shares acquired are in a company which is under the control of an unlisted company. Apart from discouraging share plans in subsidiary companies, this can also cause loss of CT relief when companies are taken over by unlisted companies. Many share plan practitioners will have been disappointed that no proposal has been made to replace the 60 pages of legislation and 200 pages of HMRC guidance notes relating to "disguised remuneration". Ideally, the legislation would be removed and replaced with new, much shorter provisions targeted at the specific abuses which the Government had identified – eg certain uses of family benefit trusts and EFRBS.
The interim report identifies a large number of problems to be dealt with and so far contains few clues as to what solutions will be proposed by the OTS. I therefore recommend that companies responding to the report should not only explain in more detail how they are affected by these issues but should also suggest ways of dealing with them," Mike added.
The report can be accessed at: http://www.hm-treasury.gov.uk/d/ots_unapproved_employee_share_schemes_interim.pdf

Sharesave Betting Pay Out
William Hill employees are to share a £3.5m payout from the maturity of a three-year SAYE-Sharesave scheme. Almost 700 employees will benefit from the success of the bookmaking firm's share price, which has risen from £1.83 in July 2009 when the scheme was launched, to a closing price of £3.13 on July 31, reported *Employee Benefits*. The Sharesave scheme, which is celebrating its tenth anniversary, allows employees to save up to £250 per month for either a three or five-year period, at the end of which they have the chance to buy William Hill shares at a 20 percent discount. Employees are invited to join the scheme every March. Those who invested the maximum £250 per month in 2009 are now in line to receive an additional £10,000 on top of their original investment of £9,000. David Russell, group HR director at William Hill, said: "I am delighted that so many of our employees are able to celebrate the success of the organisation in this way. This high return is a reflection of the hard work and commitment of our employees in driving up the share price. It really is a win-win for employees and shareholders."

On the Move
Anna Voinitskaia, formerly of Barclays Share Plans, has joined **Deutsche Bank,** where she is assistant VP, Deferred Compensation**.** Her email contact is: avoinitskaia@hotmail.com
The other '**Team GB**,' namely the economy, may not be doing nearly as badly as the Bank of England Governor, Sir Mervyn King, and others make out, according to **Martin Vander Weyer,** writing in *The Spectator* magazine. New businesses are being started up at the rate of 1,700 *per day*, or 300,000 so far this year, he says, citing statistics from *Startup Britain,* which channels Companies House data into a tracker website. The economy has been adding more than 50,000 jobs per month, which is why UK unemployment has *fallen* in successive months this year. The private sector has created two new jobs for every public sector job axed during the past two years. The overall level of corporate insolvencies, at around 4,000 per quarter, *is down* on last year's rate. Some economists question whether the current main GDP indicators (e.g. construction, manufacturing, banking etc) accurately measure the *real* growth or slump in UK's GDP, given the exceptional level of other financial, educational and entertainment internet creativity and transactions sourced in the UK. Another possible explanation for the fall in UK jobless queues is the rise, throughout EU member states, of the 'black' economy, in which all transactions are in cash and without receipts.

CONFERENCES
Awards Dinner November 6:
More than 90 guests have registered already 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. For the first time, the Centre will make an award for the best share plan communications. Members wanting to buy dinner seats either individually, or a table of ten places, should contact Centre UK Director Dave Poole on 020 7239 4971 or email: dpoole@esopcentre.com. Members pay £160 + VAT for their tickets, while non-member plan issuers may attend for £175 + VAT each. Alternatively, members can pay £1,500 + VAT to book a table (to fill with people of their own choice). In addition, Dave will be happy to discuss dinner sponsorship opportunities with interested Centre members.

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 on the island on **Friday December 7.** 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 employee benefit trusts (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. Tickets cost **£295** for Centre and/or STEP members and **£425** for non-members. For registrations and/or speaker bids, contact **Tena Prelec** at the Centre on 020 7239 4970 or email: tprelec@esopcentre.com

Davos Feb 7 & 8, 2013:
More than 20 delegates 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. Although a Davos preliminary programme can be accessed on the Centre's website ('events'), members – whether service providers or plan issuers - are invited to put forward, or discuss, themes for half-hour speaker slots – as five speaker slots remain to be filled. Our programme will include 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?*
- *Case studies on recent global and international all-employee and management equity plans*
- *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*

Alternatively, other potential slot themes may 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; **Martyn Drake,** Director, Computershare; **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 topical issues and Q & A session.
Centre member service provider (practitioner) **speakers** will pay only **£765** and no VAT for our two nights accommodation (on a half-board basis) + conference + cocktail party package deal. Plan issuer **speakers** will 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.
Early Bird offer: Confirmed delegate registrations **before September 14** will qualify for the following discounts – Service provider members package deal for **£865** (instead of £905) and plan issuer members package deal for **£475**, instead of £535 (and for non-member issuers **£585**, instead of £665) *Non member service providers do **not** qualify for the early bird discount.* Please sent delegate registrations to the same e-profile, with copy to fhackworth@esopcentre.com and to esop@esopcentre.com Mark these conference dates in your diaries and get sign-off to attend from your purse-holder.

Employee pay rises at 2.5 percent
The latest data from pay specialists XpertHR confirm that pay awards in the private sector in the three months to the end of July 2012 rose by a median of 2.5 percent. Because there are few public-sector pay settlements recorded for this period, the whole-

economy headline figure was lifted by the deals in the private sector and now stands at 2.5 percent - up half a percentage point on the two percent recorded for the previous three months. This increase means that - in spite of the unexpected rise in retail prices index inflation to 3.2 percent in July 2012 - the headline pay award lagged inflation by just 0.7 percentage points, the closest the measures have been since pay deals fell behind inflation in December 2009. In the public sector the median remained stuck at nil in the face of continuing government pay restraint. Key findings on pay awards effective between May 1 2012 and July 31 2012 include: - pay freezes still feature, accounting for one in six, of the settlements recorded; - after pay freezes, the most common basic pay award is three percent, the outcome in 17 percent of basic pay settlements; and four percent or more in 12 percent of basic awards.

Book review by Sara Cohen of Lewis Silkin

Colin Kendon's excellent 'Share Based Employee Incentives', which is Part IV of *'Internet Business Commerce and Tax,'* will be an invaluable resource for those advising on the use of equity as a management and staff incentive mechanism in technology companies. Colin successfully navigates the minefield that is the applicable tax legislation, explaining clearly and concisely what the tax rules and pitfalls are but with the focus being on the practical and commercial implications of using equity as an incentive.

Chapter 11 is a summary of the various ways equity incentives can be provided. It recognises that technology companies in particular are invariably short of cash resources and that the ability of these companies to make use of equity as an effective means of incentivising management can be critical to their success. Colin puts the importance of getting it right into context by making the point that, depending on the form these equity incentives take, effective rates of tax on gains can vary between ten percent and 59 percent (at current 2012/13 rates). The chapter explains some of the widely used industry jargon, such as the meaning of 'vesting', and then considers various different ways of providing incentives such as enterprise management incentive (EMI) options, upfront share acquisitions, the use of different classes of share with restricted participation rights and nil-paid shares. It then looks at some of the more common vesting and forfeiture conditions that companies apply and ways of buying shares back from any management shareholders who leave before an exit. There is a discussion on the role employee share ownership trusts (also known as employee benefit trusts) can play as share warehouses and warnings of the tax traps and pitfalls which close companies (under the control of five or fewer shareholders) need to be careful about when funding and operating these trusts. For those who need to drill down further, Chapters 12 and 13 contain a very useful and in-depth explanation, including examples, of the tax legislation and case-law which applies to acquisitions of shares by directors and employees and the reliefs available such as for EMI and CSOP options. It is all very well to implement exit-based equity share incentive arrangements but what happens when there is an actual exit? Chapter 14 will be of huge practical use as it examines how the most common form of exit – the sale of the shares to another company – works in practice and the tax and practical implications. It looks at the different types of consideration (initial and deferred), how contingent liabilities are dealt with and earn-outs in various forms, most, if not all, of which are a feature of any trade sale and can have very different tax implications for sellers, depending on how the earn-outs are structured. Chapter 15 contains a very clear summary of the disguised remuneration legislation introduced in December 2010. These rules apply to arrangements involving third parties, such as trustees of employee benefit trusts, and are full of traps for the unwary. Last, but by no means least, Chapter 16 mentions possible reforms without which, as Colin says, this section of the book would be incomplete.

Internet Business Commerce and Tax by Julian Hickey and **Colin Kendon**, Partner, Head of UK Employee Incentives and Benefits at Centre member Bird & Bird. The hardback is avaiable for GBP £95 at: http://www.jordanpublishing.co.uk/publications/commercial/-internet-business-commerce-and-tax-

Executive remuneration disclosure

The Department for Business, Innovation & Skills (BIS) issued for consultation on June 27 draft regulations on the disclosure of executive remuneration. The revised reporting regime (which replaces the existing regime) will take effect for reporting years ending after October 2013, reported Centre member **Clifford Chance.** As previously announced by BIS, the directors' remuneration report will contain two separate parts: a forward-looking section on proposed remuneration policy and a backward-looking section reporting on the implementation thereof in the relevant financial year. In addition, the report must include a statement by the chairman of the company, summarising the contents of the report.

The review of the financial year will have to include a number of statements, including (1) the total remuneration of each director shown as a single figure, (2) details of termination payments paid to directors and (3) a line graph showing the total pay of the CEO and the company's TSR over the previous 10 years. One of the more controversial aspects of the new regime is the 'single figure' disclosure, which will involve the actual figure earned rather than potential pay awarded. This means that the figure must include, amongst other things, salary, taxable benefits, cash dividends received from LTIP awards, bonuses for the year (including any amount deferred) and LTIP awards where the final vesting is determined as a result of the achievement of performance conditions that end in the financial year being reported on. The value of LTIP awards will be based on the aggregate market value of the shares that have vested. If vesting has not occurred by the time the report is signed off, then an estimated value must be disclosed based on the average market value of the shares over the three month period prior to the financial year end. (A similar approach will be adopted for option plans, with a reduction for the aggregate exercise price).

The future remuneration policy section of the report must include disclosure of (1) a 'future policy table' with a description of each of the elements comprised in the remuneration package, their maximum potential value and how future remuneration policy relates to the company's strategic objectives, (2) estimates of future payouts based on different performance scenarios, (3) the policy for termination payments and (4) the percentage change in profits, dividends and overall expenditure on pay for the reporting period as compared to previous years. The future remuneration policy section of the report will only be required as and when the company is putting it to a shareholder vote (which in principle may only need be once every three years – see further below).

BIS is expecting that the regulatory requirements will be supplemented by guidance on the level of detail and type of information to be disclosed to be agreed jointly between companies and investor communities and that this guidance will be in place before the regulations come into effect. *The consultation period closes on September 26 2012*.

Revised proposals on shareholder voting powers

The Government tabled several amendments about shareholder voting powers to the Enterprise and Regulatory Reform Bill, which is progressing through Parliament. As previously announced, there will be a binding 'forward-looking' vote on directors' remuneration policy. This vote need only take place once every three years and not annually as originally proposed. BIS hopes that this revised proposal will encourage companies to take a longer-term view when it comes to developing remuneration policies. Once the forward-looking policy has been approved, then only remuneration that is compliant with that policy may be paid. If a company wishes to change its remuneration policy (or to make a non-compliant payment) within that three-year period, then it will need to seek re-approval for that revised policy/payment from shareholders. Directors authorising any payment in breach of these rules will be liable to indemnify the company for any loss resulting from it. The binding vote will only require a simple majority and not the 75 percent majority as originally suggested by Vince Cable.

The original consultation proposed a binding 'exit payment' vote on directors' termination packages of more than one year's salary. The practicalities of such a requirement came under detailed scrutiny during the consultation and this has resulted in a significant change of approach. Instead of a binding exit vote, companies will be required to set out their approach to termination payments as part of their future remuneration policy, which is then subject to the binding vote referred to above. Only payments which comply with this exit payment policy can then be made. In the event of a director leaving, companies will also be required to issue a statement immediately setting out the amount of the termination payment and how it has been calculated.

As is currently the case, there will be an annual advisory 'backward-looking' vote on the implementation of the remuneration policy. (Details of any termination payments will be included in this part of the report and therefore subject to this vote). Under a new requirement, if the advisory vote fails, then this will trigger a binding vote on the remuneration policy in the following year (even if no change in remuneration policy is being proposed).

BIS stated that the provisions on shareholder voting powers were expected to be implemented on October 1 2013. Under the current draft of the Bill, certain transitional provisions will apply and payments required to be made under an agreement entered into before 27 June 2012 are excluded. Companies will need to apply the revised reporting regulations for financial years ending after October 2013. This will mean that the first binding votes on directors' remuneration policy will take place at shareholder meetings in 2014. What remains less clear, however, is whether the first binding votes will relate to remuneration policy for 2014 or 2015. For further information, contact **Sonia Gilbert**, partner at Clifford Chance.

Separately, the **Financial Reporting Council** is to consult (after the legislation and regulations referred to above have been finalised) on a number of issues concerning the UK Corporate Governance Code, including (1) extending claw-back provisions for remuneration and (2) requiring companies to make a public statement on how they intend to address shareholder concerns where a substantial minority of shareholders vote against one of the resolutions on remuneration.

FSA consultation on new remuneration data reporting requirements

On August 1 the FSA published a consultation on remuneration data reporting requirements for firms subject to the FSA Remuneration Code. The consultation, which closes on September 30, concerns the introduction of two new reports, which certain financial sector companies will be required to produce annually:

- A Remuneration Benchmarking Information Report; and
- A High Earners Report

The new requirements could be in place as early as December 31 2012. Under the amended Capital Requirements Directive (CRDIII) member states are required to collect data on remuneration practices and remit it to the European Banking Authority (EBA). In the UK, these requirements were implemented by the Capital Requirements (Amendment) Regulations 2012. Specifically, the FSA will be required to collect data in order to benchmark remuneration trends and practices and to determine the number of individuals per Code firm that earn €1m or more. The EBA will disclose this information on a member state basis, said Paul Ellerman and colleagues at *Herbert Smith LLP*. In July, the EBA published two sets of guidelines on the data collection exercise regarding high earners and remuneration benchmarking which detail what the EBA expects Code firms to disclose annually. The FSA is introducing the EBA guidelines as new rules in SUP 16 of the FSA Handbook to ensure transparent and consistent application of the data reporting requirements. SUP 16 will require certain firms to submit a Remuneration Benchmarking Information Report and/or a High Earners Report (see below). The FSA has included draft templates for data collection in the consultation in the same way as it did for disclosure pursuant to the remuneration policy statements (RPS) for Code firms in each different tier.

****The Remuneration Benchmarking Information Report*** will require significant banks, building societies and investment firms, that have total assets of £50bn or greater, to disclose to the FSA information on the structure of the remuneration practices within their group. Some of the disclosed information will relate to all staff and some will be specific to Code Staff. It is proposed that firms should publish 25 pieces of data on an aggregated anonymous basis, split between four business areas. The report will require in-scope firms to disclose such information as the total number of staff working for the business areas, the total net profit of that business and the total remuneration paid to those members of staff, together with details of how much of that remuneration is variable. The report will require firms to provide for more detailed information about the remuneration paid to Code Staff, such as the total amount that is paid in shares and share-linked instruments, the total deferred variable amounts paid in cash and shares, and the number of employees that have received guaranteed variable remuneration and the aggregate amount.

****The High Earners Report*** will require banks, building societies and investment firms, excluding solo limited licence firms and limited activity firms (i.e. those within proportionality tier 4), to disclose to the FSA aggregated anonymous data on all employees in the group (excluding subsidiaries and branches outside of the UK) with total annual remuneration of €1m or more. Once the FSA has received the information, a submission will be made to the EBA each year by the end of August. The above disclosures are in addition to what has to be published under the Pillar 3 Remuneration Disclosure Requirements.

In the case of groups, the FSA have confirmed that the new regulations will apply where it is the competent authority responsible for the supervision at the highest EEA consolidated level in the group. In which case, firms will be required to complete the reports on a consolidated basis to the highest EEA level of consolidation. Firms that are regulated by a competent authority in another EEA state will not be subject to the new regulations and will instead be subject to the regulations of the applicable member state.

The FSA stated that it would publish a policy statement containing its final rules for the reporting requirements at the end of October, which will come into force on November 1 this year. Firms that are required to complete the Remuneration Benchmarking Information Report and/or the High Earners Report will be required to submit data to the FSA for the first time by December 31 2012. The FSA has confirmed that the first submission will provide data on remuneration provided to employees in each of the last two complete financial years that ended before the rules come into effect (i.e. on November 1). Thereafter, firms will be required to submit data to the FSA annually, within two months of the firm's accounting reference date.

After the publication of the FSA's policy statement next month, containing the final rules of the reporting requirements, those firms caught by the new regulations will only have a maximum of eight weeks to prepare and disclose the required data in order to comply with the deadline. The FSA acknowledged that compliance with the benchmarking exercise is likely to impose incremental costs on firms. Although firms are required to publish similar data under the Pillar 3 Remuneration Disclosure Requirements there are differences in the benchmarking exercise that may be significant enough to require additional resources. The High Earners Report, is likely to impose significant costs on firms, added Herbert Smith.

HMRC seeks more powers

The Government wants to give HM Revenue and Customs (HMRC) stronger powers to force financial advisers to tell them about 'abusive' schemes that "artificially and aggressively" reduce taxpayers' liability. David Gauke, Exchequer Secretary to the Treasury, said that changes to the Disclosure of Tax Avoidance Schemes (DOTAS) rules would make it easier for HMRC to find out who are using an avoidance scheme to artificially reduce their tax liability. It could also allow the Government to publish warnings about schemes that are effectively being mis-sold to taxpayers by less reputable promoters. Almost 2,300 avoidance schemes so far have been disclosed to HMRC under the rules, leading to more than 60 changes in tax law to stop the avoidance, said Centre member Pinsent Masons. HMRC currently publishes 'buyer beware' style warnings aimed at the potential users of certain schemes that incorporate certain features as part of the 'Spotlights' section on its website. The DOTAS rules, introduced in 2004, have closed off around £12.5bn in tax avoidance activities to date, according to Government figures. Announcing a consultation on rule changes, http://www.hmrc.gov.uk/avoidance/tax-avoidance-schemes.pdf (34-page/141KB PDF) Mr Gauke said that the document was the latest piece of work by the Government intended to "make life difficult" for those who had found artificial ways to reduce their tax bills. "These schemes damage our ability to fund public services and provide support to those who need it," he said. "They harm businesses by distorting competition. They damage public confidence. And they undermine the actions of the vast majority of taxpayers, who pay more in tax as a consequence of others enjoying a free ride."

Tax avoidance is not illegal, but involves using existing laws to gain an advantage that the Government never intended. According to the consultation document, tax avoidance frequently involves "contrived, artificial transactions that serve little or no purpose" other than to reduce tax liability. Tax law expert Heather Self, of Pinsent Masons, warned that the proposals could increase the backlog of unsettled schemes awaiting HMRC investigation. "HMRC is faced with a huge task on legacy avoidance schemes, and the proposed changes should allow it even greater access to the schemes being sold," said Heather. "It has always been difficult to distinguish acceptable tax planning from unacceptable tax avoidance, and with HMRC taking a much tougher approach on tax planning schemes potential users, especially those who are high profile, need to be more careful than ever to ensure that they understand what they are buying – the risks as well as the rewards." Potential users should, she said, take independent advice and make sure a scheme is above board before purchasing a product. "These schemes get packaged up nicely, and are promoted as technical products with a full legal opinion. However, potential users need to remember that those promoting the schemes have a vested interest in people actually using them, especially where the promoter is based outside the UK." Strict taxpayer confidentiality can no longer be guaranteed, given the current level of 'public disquiet' in relation to tax avoidance, regardless of whether HMRC was ultimately given the power to 'name and shame' individuals found to be using avoidance schemes, she warned. *The Government is consulting on the creation of a general anti-abuse rule (GAAR), which will apply to the main direct taxes and national insurance. A narrowly-focussed GAAR could potentially come into force from April 1 next year.*

France legislates to cut top public sector pay

The salaries of more than 50 heads of state owned (or controlled) enterprises in France are to be limited by law to a gross maximum €450,000 pa (GBP 350,000) the French government announced. This amount has been chosen because it is 20 times the pay earned by the lowest paid ten percent of employees in the public sector. About 20 of these 50+ state enterprise bosses already earn more than €450,000, so cuts in their salaries will have to be ordered by their *conseils d'administration.* The government is giving them one year in which to fall in line. The man in most difficulty is Henri Proglio, ceo of the French electricity company EDF, who last year earned €1.6m. Another unhappy man is Luc Orsel, ceo at Areva, the state nuclear company, who earned €679,000 last year. A further dozen companies, large subsidiaries of the state owned giants, will be caught in the same top pay vice, including the bosses of Postal Bank and Energies Nouvelles. Not content with this, the government is gearing up for a 'consultation' exercise, starting this autumn about how equity pay awards in both the public and private sector - including stock options, free shares and golden parachutes - can be better regulated to prevent 'abuse.' French head-hunters say the effect of such measures will be to encourage some of the best state sector bosses to seek their fortunes abroad. Furthermore, senior executives within these companies will be discouraged from seeking the top job because they will be able to earn more by staying one or two steps below the boss within the managerial structure.

French tax rises: 'The longest fiscal suicide note in history'

The French socialist government approved a series of punitive tax-raising measures, which will hit companies, employees and other private individuals hard before the end of this calendar year. At least two of the measures will inflict serious damage on the French employee financial participation industry (Eso) namely:

*The tax paid by ***employers*** on stock options and shares awarded to their employees, French or foreign, increases from 14 percent to ***30 percent***, reported Agnes Charpenet of Centre member **Baker & Mckenzie LLP.** Stock options and share awards benefiting from the specific tax regime for both tax purposes (*Articles 163 bis* C, 80 bis and 200 A-6 of the French Tax Code for stock options and Articles 80 *quaterdecies* and 200 A-6 bis for shares awards) and social security purposes (Article L. 242-1 of the French Social Security Code) were subject to a 14 percent special employer contribution at grant. The rate of this contribution was increased from 14 to 30 percent and applies to options and share awards granted made as of July 11, 2012. This measure will deter many French businesses from awarding employee options and/or shares in future, because companies will not want to pay 30 percent of their value to the state.

*The internal company programmes – eg salarie epargne - providing saving benefits to employees, French or foreign, will be taxed at the higher flat rate of ***20 percent*** (instead of the current eight percent rate). This will discourage employees in France from holding shares long-term within diversified company savings & investment portfolio schemes. This measure becomes applicable on the date the new law takes effect, probably from August 1. The eight percent rate of ***special social contribution*** (forfait social) had been applicable for several years to compensation items exempted from social contributions (employee bonuses – e.g. dividends payment, directors' fees, profit-sharing among all employees.

In addition, the rate of the eight percent ***specific social contribution*** due by those employees receiving benefits at the time of sale (i) of shares acquired when the stock options are exercised, (ii) of share awards, benefiting from the specific regime, was increased to

ten percent for sales made as of the time when the law enters into force.

Our thanks to Philippe Bruno and Barbara Kaplan of Greenberg Traurig LLP for their analysis of the further tax changes below:

*The revenue generated by employee overtime is no longer exempted from income tax and will be taxed at the applicable rates. In addition, employers will have to pay all social charges applicable to overtime, which were suspended under the current policy. This measure was due to take effect from September 1

*The Wealth Tax, the tax on assets held by individuals, foreign or French, in France is being hardened. This exceptional tax is due on assets valued at more that €1.3m. This tax is retroactive to January 1, 2012, and must be paid by November 15 this year. This exceptional tax will probably be part of the new tax reform applicable from 2013.

*The donation and inheritance tax exemption is lowered to €100,000 per child from €159,325, and is no longer indexed on inflation. For donations, the tax exemption period is increased to 15 years from the current ten years. These measures apply to French nationals residing abroad as well as to foreign individuals, applicable from this summer.

*The increase in VAT voted by Sarkozy's ex-government (the 'social VAT'), to offset a matching decline in certain social charges paid by employers for their employees, is abrogated. The VAT rate is reduced to its previous rate and the social charges paid by employers are increased to their former levels. In addition, the increase of two percent of the social tax raised on revenue from investment and capital, already in effect since January 1, 2012, is maintained. These measures are applicable from October 1.

*All non-residents, whether or not they are French nationals, will pay an additional special tax of 15.5 percent on the rental and capital gain revenue generated from real-estate property held in France. This measure will apply to capital gains achieved after the date the new law takes effect, but will apply to rental revenue generated since January 1 2012.

*A new corporate tax of three percent will be levied on all French or foreign corporations, calculated on the value of the dividends paid by these companies in France. This measure will become applicable on the date the new law takes effect (probably this month).

*An additional new tax of 0.25 percent is imposed on lending institutions. This tax will be calculated in proportion to the risks that such institutions take in dealing with certain financial instruments (similar to the current so-called 'tax on financial risks'). An additional new tax of four percent is also imposed on oil companies, based on the value of tax-exempted oil stocks held in France as of July 4, 2012. This tax will be paid in one instalment on December 15.

*The tax on financial transactions is doubled from 0.1 to 0.2 percent. It is imposed on all financial transactions conducted by corporations quoted on the Paris stock exchange, irrespective of where the buyer or seller are located, or where the transaction takes place (as long as the stock held by the French company is above €1bn). This tax took effect on August 1. This is France's own 'Robin Hood' Tax, according to the Labour Research Department Fact Service: "It is a small start, covering only shares in larger companies, and at 0.2 percent, it's still lower than the UK Stamp Duty on which it is modelled. But it was only ever intended as a step towards a wider, bigger European tax which the French, German and ten or more other governments will be negotiating this autumn. This element of a broader Financial Transactions Tax was originally announced by former President Sarkozy at the beginning of the year, and was taken over (and doubled from Sarkozy's 0.1 percent proposal) by President Hollande. It will only affect trading on French companies worth above €1 billion. But it will raise over €100m a year for social causes like combating poverty at home and abroad as well as tackling climate change," added LRD. Taxand, the tax-advice firm, warned that in France "Many will question why they should keep their trading operations in the country."

*The new laws contain a number of measures destined to limit tax evasion by corporations through the use of tax heaven schemes. These include:

a. Companies that control an affiliate located in a tax heaven: the parent will have to demonstrate that the affiliate has a genuine economic activity and is not used to evade French taxation;
b. Parent companies that fund/subsidize foreign affiliates to reduce taxable revenue in France will not be able to deduct such transfers from their revenue;
c. Capital infusion through undervalued stocks will be taxed as if they were illegal transfer of funds/subsidies;
d. Companies that artificially reduce or terminate their economic production activities in France will not be able to account for accumulated losses in the calculation of the corporate tax; and
e. Companies that artificially lower the value of an affiliate through massive payment of dividends will not be able to claim capital losses. These measures will become applicable on the date the new law takes effect (probably by September 1.) A proposal has been introduced in the French parliament to establish a special Tax Haven Commission to deal specifically with these measures.

*Finally, the new law places on the French parent the burden of proving that an affiliate located outside France is engaged in genuine economic activities and was not established for the purpose of evading French taxes.

Another measure, not yet passed, but which is

seriously being considered, is an increase of the highest tax income rate to 75 percent for individuals making more than €1m per year. This new tax rate would apply to all individuals, French or foreign, who pay income tax in France.
This is the first set of measures that the socialist government is planning to take this summer.
Other announcements will follow in the Autumn, applicable from 2013. This marks a drastic change in the way France will tax people and companies for the foreseeable future in order to reduce its yawning budget deficit and bring it in line with the EU-agreed target of three percent.
The French government is still considering whether to require the payment of income tax based on nationality (nicknamed the Johnny Hallyday tax), that is, requiring French nationals to pay income tax, or at least file an income tax return, for revenue generated outside France, even when they reside fiscally elsewhere, e.g. Switzerland.

New trustee reporting requirements
France has imposed new annual tax reporting requirements for trusts that meet either of the following conditions (subject to certain exceptions): the trust owns one or more French assets, or the settlor, or at least one of the beneficiaries, is a French tax resident, said Sullivan & Cromwell LLP. French assets include real properties located in France, receivables/loans from a French debtor and shares issued by French companies. Trustees of trusts that met either of such conditions on July 31 2011 are required to comply with the new reporting obligations by **September 15** this year. In connection with such reporting, trustees must disclose to the French tax authorities information regarding the trust and the fair market value of the assets held by the trust on January 1 of the year in which the report is filed. Failure to comply with the reporting requirements may trigger a penalty equal to the higher of €10,000 or five percent of the value of the trust fund worldwide. The settlor and beneficiaries of the trust are jointly and severally liable for the penalty.

Esop problems in SA mining sector
Payouts of R500000 each to 6000 members of Kumba Iron Ore's employee share trust last year were the envy of mining workers around the country. As the debate continues around nationalisation of the industry, could employee share option schemes (Esops) be a better way to spread the benefits of SA's mineral resources more widely? A closer look shows it isn't an easy alternative, reported the *Financial Mail, South Africa.*
"With hindsight, employee share option schemes in the mining sector, with the exception of Kumba's and Exxaro's, have been singularly unsuccessful in delivering reasonable, sustained benefits to employees," The Esop Shop (SA) md Gavin Hartford said. "The reason lies with the debt structure underlying schemes in a sector of volatile commodity prices and high costs of production, which has affected share prices." Esops are vulnerable to the whims of the share markets. While iron ore companies' shares have done well, gold shares have under-performed the gold price, largely because of competition from lower-risk exchange. Last year Anglo-Gold Ashanti restructured its Esop to ensure employees received real benefits. The first two tranches of e-shares, intended to reflect appreciation in the share price from a base of R288/share, had vested with no value. Public affairs manager Alan Fine said Anglo-Gold had held discussions with unions and employees to restructure the scheme so as to "fulfil the spirit of the Esop". Various steps were taken, which cost Anglo-Gold R120m. Fine said there were various reasons for choosing an Esop: It was a contribution to the group's mining charter ownership obligation and it was considered good policy to align, to some extent, workers' and shareholders' interests. "Obviously it does not eliminate conflicting interests over, say, wage bargaining," he adds. Anglo-Gold has other bonus schemes in place based on productivity, safety and other criteria. Hartford said it was unfortunate that a core driver of Esops in SA has been the regulatory environment, which requires broad-based equity ownership. "This suits black entrepreneurs who take a risk and realise value by selling their shares, but it isn't in employees' interests. If the regulations were changed to allow companies to earn empowerment points by giving employees a proportion of profits, we would have a very different scenario. Even when markets are up and down, many mining companies still generate profits."
The 'complexity' of Esops can make them very difficult to explain, especially to employees with minimal education. Last year when Xstrata proposed giving employees a three percent stake in its SA operations, the National Union of Mineworkers (NUM) called a strike. Xstrata Alloys media spokesman Songezo Zibi says the initial misunderstanding was that Xstrata regarded this as an incentive scheme and the NUM saw it as a black economic empowerment scheme. Xstrata has now agreed to amend the scheme to make it Black Employee Empowerment law compliant. He said Xstrata had learnt two lessons. The first is that from the start both parties must understand why this is being done. The second is to manage expectations. "Employees can be easily carried away, especially when they hear about schemes like Kumba's that pay a lot of money," he said. "We had reports of people ordering cars in anticipation of our payout. Payouts depend on how the scheme is modelled. We have communicated very strongly what people should not expect and how the scheme works and we believe we have managed that problem." The structure of the scheme has now been finalised after negotiations with the union. "Xstrata doesn't have any Esops elsewhere in its operations, but we believe this is a good idea because it aligns shareholders' and workers' interests in the business," Zibi said. Anglo-Gold supports the principle of employee share ownership. "It has

contributed positively to our labour relations as well as transformation of the industry and the economy as a whole," Fine added.

Japanese tax clampdown on employee Eso abuse

To date, there have been no employer reporting or withholding tax requirement in Japan when resident employees receive equity awards (stock options, performance shares, restricted stock units) from the foreign parent entity, provided the plan is administered outside Japan and the foreign entity does not recharge the cost of the equity awards to the Japanese subsidiary. Instead, the employee has been responsible for reporting the income from equity rewards on their individual income tax return due March 15 following the tax year-end, reported Centre member **Deloitte.** Recent tax audits, however, exposed cases of significant levels of underreporting of equity income by some employees, and it was in response to this issue that the **new reporting requirement** was implemented as part of the 2012 tax reforms. From Jan 1 next year, Japanese subsidiaries that are owned (directly or indirectly) 50 percent or more by a foreign company and Japanese branches of foreign companies will be required to submit an annual statement to the national tax office detailing any income realized from equity income (including cash awards where the underlying value of the award is based on share value) for their tax-resident employees and directors. This statement would be due by March 31 of the year following the payouts, with the first statement being (due March 31, 2013, for transactions arising in 2012). The Japanese National Tax Agency released regulations addressing the data to be reported, as well as a template of the reporting form itself. Rather than a summary report covering all employees, the tax authorities want a separate form to be prepared for each relevant employee. The appearance of the proposed form is similar to that of the existing statement of income (withholding tax) or *Gensen Choushuu-hyou* that summarizes an employee's annual earnings. Details that need to be included on the equity reporting form are:

*The name and address of the individual receiving the income

*Details of the compensation received (including date of receipt, details of the payment (i.e., whether paid in shares or cash), the total value of the compensation received, the exercise price paid (if any), the number of units and the value of those units at receipt (e.g., the share price), and the currency of the transaction).

*The date the right to receive the income was granted (i. e., the grant date), the type of right (i.e., the type of scheme — stock options, etc), the total entitlement (total cash, number of shares, etc.) the individual has under the grant.

*Name of the issuing parent company and the country where it is based.

*The name, address and telephone number of the issuer of the statement.

The form, in its current format, only has space to report a maximum of three transactions per individual. Deloitte is discussing with the Japanese tax authorities how individuals with a larger number of transactions should report the additional information and whether alternative formats will be acceptable

Bonus Corner

Large bonus payments are creeping back among top civil servants, after two years of self-denial. The number of five-figure bonus awards made to officials at the **Cabinet Office**, the **Foreign Office** and **Ofcom,** the media regulator, doubled last year. Ten civil servants received awards worth more than £30,000, including one **Ministry of Defence** official who received a discretionary payment of almost £100,000. The Whitehall bonuses comeback emerged amid fears that the Coalition will be forced to launch another round of spending cuts after a collapse in tax receipts as the economy plunged back into recession. Within days of becoming PM, David Cameron vowed to crackdown on "crazy" bonuses in the public sector. Many mandarins then agreed to waive these payments, but recently-filed departmental accounts show that awards have returned. A trawl of the remuneration reports of more than 200 Government agencies and departments found:

* Six staff at the Cabinet Office took home bonuses of between £10,000 and £20,000 during 2011/12 — three times as many as in the previous year. They included Sir Jeremy Heywood, the Cabinet Secretary, and Sue Gray, the Cabinet's Office's head of propriety and ethics.

* Phil Wynn Owen, the Department of Energy and Climate Change official in charge of 'greening' Britain's economy, received a discretionary award of almost £15,000 *Three officials at the Department for Communities and Local Government received bonuses of up to £14,000. * Two civil servants at the Department for International Development, the Whitehall agency charged with helping the world's poorest people, received bonuses of between £10,000 and £15,000 last year. * The Met Office ceo, John Hirst, received a supplementary bonus of more than £40,000. A fellow director accepted a bonus of £20,000. *Three directors at the Training and Development Agency, responsible for improving teachers' skills, were given performance-related pay of between £30,000 and £40,000.

* Five officials at the Ordnance Survey received bonuses of between £15,000 and £30,000.

* The highest bonus uncovered by *The Sunday Telegraph* was paid to Mike Robinson, the outgoing ceo of the UK Hydrographic Office, which produces navigational systems for the Royal Navy. On top of an annual salary of more than £160,000, Mr Robinson was paid a bonus of almost £100,000 for 2011/12 for work in his final 18 months at the agency.

One senior Government source said: "Some ministers are well aware of these bonuses and are furious. Ministers don't receive bonuses — in fact they took a five per cent pay cut when the Coalition was formed. We had a year or two when civil servants thought it best not to been seen to take their bonuses. Now many are creeping back. All in this together are we? It doesn't look like it." Matthew Sinclair, ceo of the **TaxPayers' Alliance**, said such lavish bonuses seemed at odds with the two-year public sector pay freeze imposed by Mr Osborne. "Taxpayers will be justifiably angry that government departments and quangos are undermining his edict by handing out these massive bonuses," said Mr Sinclair. "Some of the eye-watering figures being paid out would be hard to justify in the good times, but when the economy is stagnating, they are a slap in the face for families who are struggling to make ends meet."

By contrast, the US authorities once again stamped down hard on another executive 'bonus' plan – when a bankruptcy court judge outlawed a plan to give eight **Hawker Beechcraft** executives \$5.3m in bonuses, ruling that it would have merely rewarded them for staying in their posts. The US Justice Department and others had filed formal complaints to the court against the Kansas planemaker's bonus scheme. "Why should a company in distress pay millions of dollars extra to its executives for work they are already paid to do," demanded machinists' union employees spokeman Frank Larkin.

Deutsche Bank AG, one of Europe's biggest banks, changed its rules on bonuses to allow the company to claw back stock awarded to its staff by *former employers*. The rules will apply to unvested stock from previous posts converted into shares of Deutsche Bank and affect senior bankers who started in or after January, said Ronald Weichert, a spokesman for the Frankfurt-based lender. Deutsche Bank co-ceo Anshu Jain, 49, said that the banking industry needed to address the balance of rewards for shareholders and staff. One in six global banks reclaimed executive compensation last year as European and North American regulators pressurised firms to impose penalties on employee risk-taking. "The sector will have to move in unison for a plan like this to work for Deutsche Bank," said Christian Hamann, an analyst with Hamburger Sparkasse: "They have to address their total levels of compensation so that more money goes to shareholders and less to staff."

UBS, Switzerland's biggest bank, introduced claw back provisions after record losses during the credit crisis. Some of those rules permitted the bank not to pay deferred bonuses when units or the group as a whole turn out to be unprofitable. In 2010, senior bankers at UBS were deprived of CHF 300m of deferred bonuses after the company reported a CHF 2.74 bn loss for 2009

Meanwhile, compensation rises for UK company executives are showing signs of "cooling off", although a minority are continuing to receive substantial increases, according to a report. Earnings growth slowed in the past year to a median of 8.5 percent, lower than a similar study last October, research by **Incomes Data Services** (IDS) among ceos in the FTSE 100 showed. Performance-related bonus pay fell on average by two percent to around £670,000 pp. However, the total pay package for the typical ceo of a FTSE 100 company hit £3m for the first time last year, the report said. The average earnings rise for Britain's top bosses was skewed by a few who received massive increases or collected big share awards like Phil Cox at **International Power** and former boss of **Croda,** Mike Humphrey, who retired at the end last year. Steve Tatton of IDS said: "Remuneration committee members have now realised that their decisions will be scrutinised very closely by shareholders and the media. "Shareholders are demanding to know what they are paying for. No longer, it appears, do remuneration committees and directors have a free hand, in the words of some, 'to pay themselves what they wish'. While Shareholder Spring has attracted a lot of attention recently, our analysis suggests that the pay packets for chief executives were already starting to reflect sentiment among shareholders and the wider public in the second half of 2011. There are definite signs of cooling off in executive pay awards." However, leaders' pay is still growing a considerably higher rate than the rest of their workforce, with the average pay rise across the economy being 1.6 percent - lower than inflation – according to ONS figures released recently. Furthermore, the FTSE 100 dropped 6.5 percent during 2011 - meaning that many investors were losing money while ceos enjoyed their larger salaries.

Alison Carnwath**,** the head of **Barclays**' remuneration committee, resigned from the bank's board after facing criticism from shareholders over executive bonuses. Ms Carnwath, 59, worked in investment banking and corporate finance for 20 years before becoming a non-executive chairman of several companies including Land Securities and Man Group. Earlier this year, a third of **Man Group** shareholders failed to back Ms Carnwath's re-election as a director amid significant concerns over the company's direction and performance. In May, the *Wall Street Journal* reported that Ms Carnwath argued against the award of the £2.7m bonus to Mr Diamond but failed to persuade fellow board members, including chairman Marcus Agius, to back her view. The board eventually agreed a compromise on Mr Diamond and finance director Chris Lucas' annual bonuses, which meant they would only receive the full award if Barclays met certain equity targets. At the bank's agm last April, 21 percent of shareholders voted against reappointing her to the board and 27 percent voted against her committee's pay awards.

Three quarters of non-executive directors (NEDs) believe that remuneration for top jobs is too high, according to a new study from **The Hay Group**. The study, entitled 'The Trouble With Executive Pay', interviewed 60 NEDs from remuneration committees in the FTSE 350. Of those questioned, 87 percent of them said that top pay in the current form 'needs to change'. The NEDs interviewed pointed specifically to an 'insufficient' connection between pay and performance, but, according to the study, no one seems to know how to make the changes that would bring the two things in line. NEDs are apparently happy to admit to a survey that they're getting it wrong, but less willing to share their concerns at board level. The age-old argument for massive pay packets is that they are the only way to recruit and retain the best people in the industry. But, as John Dymond, director at The Hay Group, points out: "There is always a trade-off between pay for performance and the retention of executive talent, but committees need to consider this much more explicitly." The results follow a study by a family history website, Genes Reunited, showing that bankers' salaries are among the fastest growing over the last century. In 1911, John Dunn of Parr's Bank (now part of NatWest), earned £6,000 per year, which when adjusted for inflation is around £530,000 a year. By contrast, the former CEO of Barclays, Bob Diamond, was earning £1.35m per year plus bonuses and share options at the time of his resignation. According to *Financial Times* research, an average figure for the earnings of top bankers is around £8m a year when bonuses and share options are added to their basic salaries. That equates to around 2,100 percent more compared with 1911. A teacher in 1911 earned the equivalent of £15,000, which means only a 100 percent increase to £31,000 today.

Public pressure is helping drive a gradual shift on pay for senior corporate executives, according to one of the UK's most influential investors. **Standard Life Investments** ceo Keith Skeoch said there was "no quick fix" within a financial year on pay and bonuses seen as excessive. But he said investors were getting more engaged in pushing company boards into reforming the way they pay top staff. Mr Skeoch argued a "social consensus" was starting to emerge. Speaking on BBC Radio Scotland, he said the issue was "not just for a technical economist and governance expert". He continued: "Economic policy and principles survive and thrive and are sustainable if they're backed by a social consensus, and we're starting to see a social consensus emerge." He said incentives to senior managers had to be long-run and paid in shares more than cash, so that executives' interests were aligned with shareholders and the long-run performance of the company. Mr Skeoch's division of Standard Life savings and pensions group in Edinburgh manages £155bn in assets, around £50bn of that in shares. Other investments are in property and bonds. But Mr Skeoch argued the financial crisis meant that others were joining the Edinburgh firm in taking an active role in holding company directors to account: "What we're finding with the shareholder spring is that, as a result of all the pressures, post the financial crisis, more people are beginning to come and join the party, and are beginning to understand the importance of investing, of good stewardship and good governance to long-run return, rather than just focusing on the short-run stuff." He welcomed proposals from the UK Business Secretary Vince Cable to introduce binding votes on remuneration policy. "These proposals are helpful, because there is now a stronger means by which investors and shareholders can hold [remuneration] committees to account," he said. "There's going to be much more effective engagement and dialogue about these issues. In the last 18 months, the level of engagement throughout the industry has picked up quite significantly." But the asset management chief said that those with a stake in the success of companies should not just be the shareholders, but corporate bond-holders as well.

BHP Billiton has written down the value of its US shale gas assets by $2.84bn (£1.8bn), prompting Marius Kloppers, head of the world's biggest natural resources group, to waive his annual bonus Last year, Mr Kloppers was granted a bonus of $2.35m in cash and an equivalent amount in deferred shares after the company posted a record profit of $23.6bn. The head of BHP's petroleum division Mike Yeager will also forgo his bonus after the massive impairment charge. Other mining groups have also had to write down the value of assets. Tom Albanese, **Rio Tinto's** ceo, forfeited an annual bonus after the mining group wrote down its **Alcan** aluminium assets by $8.9bn.

Alan Joyce, ceo of troubled Oz airline **Quantas**, announced that he would refuse his annual bonus and pay rise after a 90 percent fall in its pre-tax profits for the year ended June 30. *"It's absolutely appropriate that when company returns go down, executive pay should go down as well*," Mr Joyce told the *Australian Financial Review. "It has been an extremely tough year for Qantas shareholders and what we want to show is that my pay has to have a huge correlation with the profitability of the company."*

Fairfax Media (Oz) ceo Greg Hywood offered to forgo a cash bonus worth hundreds of thousands of dollars in the wake of the company's deteriorating earnings and cost-cutting. Mr Hywood told the Fairfax board that he would waive his right to his annual bonus, but board members rejected the idea and said he had a 'tough job' to do. A compromise was reached whereby Hywood would still be paid a bonus, which would be worth 50 percent of the amount he was entitled to under the terms of his contract.

Almost 90 percent of **Fortune 100** companies in the US have a publicly stated clawback policy on bonuses, according to executive compensation consultants Equilar. Many introduced clawback after the Dodds Frank Act became law.

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