

it's our business

newspad of the Employee Share Ownership Centre

Centre condemns attack on share schemes

Centre chairman Malcolm Hurlston CBE condemned a leading think tank report, which called for the abolition of three out of the UK's four tax-advantaged employee share schemes.

Only the Share Incentive Plan (SIP) should survive in something like its current shape said the report, entitled: *Sharing Profits & Power – Harnessing Employee Engagement to Raise Company Performance* - published by The Institute for Public Policy Research (IPPR), a deservedly prominent organisation when James Cornford ran it.

“To reform the complex and regressive current system of tax advantages for employee ownership, Enterprise Management Incentives (EMI), Company Share Option Plans (CSOPs) and SAYE schemes should be abolished and tax relief for them removed: SIPs should become the only tax-advantaged employee share ownership model,” said the IPPR report, written by Kayte Lawton senior research fellow at the IPPR and by ex fellow, Tess Lanning.

For only the SIP and SAYE Sharesave are open to all full-time employees they claimed, but the SAYE scheme was tainted because participants did not have to buy shares once their contracts matured and, even if they did, they could sell their shares immediately – thus discouraging long-term ownership, the authors argued.

“As for the other two tax-advantaged share schemes, they can be restricted to particular employees within a company and are primarily used to incentivise senior executives and other high-earners. *EMIs are designed to help small, high-risk companies recruit and retain highly skilled staff, while CSOPs are primarily used to offer incentives to company directors,*” they claimed.

“In the short-term, government should reform the tax advantages that apply to these models to simplify the regime and end tax reliefs that are likely to generate little value for taxpayers. Tax arrangements for direct employee share ownership should be simplified into a single scheme that must be open to all employees, and tax relief should be extended to indirect employee ownership. Tax relief for share ownership schemes that can be restricted to particular employees should be ended, as should relief for the SAYE scheme, which does not require actual shareholding.

From the Chairman

I decided over Christmas it was time for a more relevant and realistic index and, pending the wholehearted support of a leading merchant bank, I began my own. I put half the fund into Sports Direct and sat on my laurels (having eschewed Co-op PIBS). I am glad to tell you that as of now the index is up 50 percent (or 25 percent depending on how you account for the cash) since Sports Direct was bought at £4.09 and stands as I write at £6.74. I shan't trouble you with the fate of the ethical PIBS. This proves conclusively that the esop/zero hours model outperforms...you can probably finish the sentence.

Malcolm Hurlston CBE

“Direct employee share ownership helps to align the interests of employees with those of managers and owners, driving productivity gains and ensuring that employees see a share of rewards. However, schemes that can be restricted to higher earners are unlikely to have a positive effect on productivity, and enable a small group of employees to capture the financial returns generated by collective effort. They also incentivise the use of stock options for senior employees, which has been associated with spiraling executive remuneration. Meanwhile, EBTs enable employees to hold a substantial stake in their company and promote sustainable employee ownership – yet government lacks a clear strategy to promote this beneficial ownership model, which is treated unfairly by the tax system.”

The IPPR, which describes itself as the ‘UK’s leading progressive think tank’ and as an independent charitable organisation with more than 40 staff members, visiting fellows etc, who ‘want to build a society offering decent fulfilled lives in reciprocal relationships with people they care about.’

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The report continued: “SIPs offer tax relief to all-employee share ownership schemes, and require employees to purchase and hold shares for a number of years in order to benefit from the tax advantages. Tax relief is available for SIP trusts held for the benefit of employees on the proviso that the shares are distributed to employees within ten years. This limit should be removed so that permanent employee benefit trusts receive fair tax treatment; costing £50m in the first instance. Scrapping the EMI, CSOP and SAYE schemes would save the government £285m which should be ploughed back into tax reliefs for permanent SIP trusts. HMRC approval for SIPs should be retained to limit opportunities for tax avoidance.”

However, the authors appear to be unaware that CSOPs are often used by companies to incentivise tens of thousands of lower-paid employees, such as supermarket checkout staff, who often cannot afford to join Eso schemes requiring participants to put money on the table to buy shares or options, such as the SIP or SAYE-Sharesave. This is why the Centre campaigned successfully to keep the CSOP as a mainstream tax-approved plan when it was under threat during the Office of Tax Simplification review.

Furthermore, the authors seem unaware that retention rates of shares bought after SAYE contracts expire has been on the increase. While it is true that SAYE has suffered a fall in the number of UK schemes and in overall participant numbers, most economists put this down to the economic recession.

The authors comments on EMI seem wide of the mark too: increasingly, these ultra popular share option based schemes in SMEs are being offered to more and more key employees who are often not directors at all, especially true of the high-tech sector.

Their report is lopsided too on the issue of EBT taxation. It says: “Tax relief for EBTs was removed in 2003 due to concerns about tax avoidance, but this means that they are now treated unfairly by the tax system. Profits are taxed twice: once when they are paid into a trust, and again when they are distributed to employees. This means that every £100 of employee trust shares cost £139 in company cash (Ownership Commission 2012).”

However, this ignores the fact that EBTs are standard vehicles in approved UK share schemes, used to warehouse the employee shares, which often cannot be retrieved with tax relief still applying, unless held for a number of years.

The IPPR report adopts one of the Graeme Nuttall proposals, not accepted by the Coalition government – the so-called *Right To Buy*. On this, the authors said: “As well as reforming the tax advantages surrounding employee ownership, government should develop a ‘right to buy’ for employees when a company is likely to be sold, dissolved or floated on the stock exchange. This would be designed for family and privately-owned companies, including those owned by private equity.

Employees would have first refusal and if more than a minimum proportion (for example, ten percent) registered an interest they would be given a reasonable amount of time to put together an offer.”

About the report and, in particular, the proposal that the CSOP, EMI and SAYE-Sharesave should all be scrapped, the Centre chairman had this to say: “Bring on the men with the flapping white coats. Hundreds of thousands of employees have benefited from these share schemes and HMRC attested to their value. Letting a hundred flowers bloom is one thing; crass naivety is another.”



ROME: June 5 & 6, 2014

The Centre is delighted to announce the venue for its 26th annual summer conference on international employee equity plans: **Rome the eternal city on Thursday June 5 and Friday June 6** next year.

Our conference venue, **Residenza Di Ripetta**, part of the Royal Demeure Luxury Hotel Group, is a converted 17th century convent, featuring high ceilings, ancient frescoes, original arches, elegant furniture and classical statues. A panoramic terrace offers views over the city and there is a large inner courtyard with garden and gazebos. The hotel's bar and restaurants are a haunt of Roman socialites. For more information visit: <http://tinyurl.com/nc9ksdv>

All delegates can choose to stay on in their rooms, post conference, to taste Rome's magic over the full weekend – **the nights of Friday June 6 to Monday morning June 9** – for the same discounted B & B rate that the Centre pays the hotel. The same discount will apply to delegates who arrive on Tuesday June 3, all subject to availability.

This four-star plus hotel is superbly located between Piazza del Popolo and Spanish Steps. The Field of Mars, Palazzo Borghese, Via Corso (Rome's most famous shopping street), Villa Medici and the River Tiber are all little more than 100 metres away. The nearest metro station is **Flaminio**, just five minutes walk.

The Centre is offering members a unique opportunity to assume lead sponsorship of this major event. They can do so either on a sole basis, or they can split the cost of the sponsorship by joining forces with a partner organisation.

In return for free speaker places and other marketing privileges, the Centre is seeking the sum of £6,500 for the title of lead sponsor of our Rome conference. You can download the sponsorship brochure for full details here: <http://tinyurl.com/qfy3mcp>

Demand for speaking slots at this event will be heavy, so the Centre will give priority to those members who can offer international share plan case histories. Please contact Fred Hackworth at fhackworth@esopcentre.com with copy to esop@esopcentre.com for more details.

Union's new defence line over postal sell-off

The postal workers' union, which remains bitterly opposed to the planned £2.5bn flotation of **Royal Mail**, has demanded the establishment of a 'workers' trust' to hold their ten percent equity stake if the sell-off goes ahead this autumn, possibly later this month.

The Communication Workers' Union's (CWU) new idea is to set up an EBT in order to hold the 150,000 postal workers' promised free shares and thus exercise a potentially powerful collective voice over how the business should be run, post privatisation.

This is a significant row back by the union, whose leadership is still trying to organize strikes against the impending Initial Public Offer.

Postal employees are expecting to be offered around £2,000 worth of free shares each, to be held, probably, for a minimum three years in a giant Share Incentive Plan. The CWU has been studying the Esop trust set up by staff of eircom, the then Irish telecoms monopoly when it was privatized in 1999. Over the years, before being wound up, the eircom Esop paid out huge sums to participants, as its collective shareholding became a powerful piece on the corporate chessboard during frequent changes in ownership.

Bookings high for Centre Awards dinner

More than 100 places have been booked for the Centre's sixth annual awards black-tie champagne reception and dinner on **Wednesday November 6** at the **RAF Club** in Piccadilly. Only 25 places remain, so register now to avoid disappointment.

The Centre would like to thank member **Ogier Corporate Services**, which is a supporting sponsor of this prestigious event.

Ogier's corporate services division, headed by Philip Norman, provides onshore and offshore director, corporate administration, secretarial, bookkeeping and accounting services to diverse corporate and institutionally owned multi-jurisdictional structures consisting of companies, limited partnerships, unit trusts and other vehicles.

Centre chairman **Malcolm Hurlston CBE** will address the diners and then international director **Fred Hackworth** will announce the names of the winners and runners-up for the main categories of awards this year, namely:

***Best International Share Ownership Plan (more than 1,500 employees)**

The finalists for this year's main award are, in alphabetical order: **ARM Holdings**, nominated by **YBS Share Plans**; **Edwards Group**, nominated by **Equiniti**, and **Rio Tinto**, nominated by **Computershare**.

***Best Employee Share Ownership Plan (fewer than 1,500 employees)**

This year two entries have been selected as finalists in this category. Again in alphabetical order, these are: **ASOS**, nominated by **Capita**, and **IGas**, nominated by **Equiniti**.

***Best all-employee share plan communications:**

Following a successful baptism of this award last year, the Centre is pleased to announce three to quality finalists. These are: **Morrisons**, nominated by **YBS Share Plans**; **Pearson**, and **Telefonica**, nominated by **Global Shares**.

In addition this year there will be two individual awards:

***Esop Institute student of the year award:** chosen by the Registrar and the Chief Examiner after the July 31 exams.

***Share plan personality of the year award**

Mike Ashley, owner of Newcastle United FC and majority shareholder in **Sports Direct** (*see news story further down*) is a late nomination for this year's *Esop Personality of The Year Award*. Up against him are **John Whiting**, tax director of the Office of Tax Simplification and Business Secretary, **Vince Cable**, for his work with Royal Mail.

Ticket prices for members this key event in the Centre's calendar are: £160 per seat and £1,500 + VAT for tables of ten.

Please contact Harry Atkinson hatkinson@esopcentre.com or 0207 239 4970 if you are thinking of booking either a convivial table or individual seats.

Further sponsorship opportunities are available for this year's dinner: please download the sponsorship brochure from <http://tinyurl.com/lzh6xnj>.

Share schemes news

Pump maker **Edwards Group**, a finalist in this year's Centre Award for *Best International All-employee Share Plan in companies with more than 1,500 employees*, has been gobbled up by Sweden's **Atlas Copco** in a £1bn deal, which will repay investors, including employees, at c. £6.75 per share – a 24 percent premium on its recent share price. Edwards employs 3,200 staff, many of whom can expect substantial payments for their employee shares. The

company has built up strong market positions in sophisticated vacuum pumps for chemical and pharmaceutical sectors. Edwards' majority investors are CCMP Capital and Unitas, both linked to JPMorgan.

This autumn **HSBC** will launch a new international all-employee share plan to replace its present global international savings-related share option plan. Under the 'old' plan, one-year options were exercisable three months after the first anniversary of the savings contract, reported *Employee Benefits*. The 20 percent discount applied to three and five year options and 15 percent to one-year options. HSBC will continue to offer UK employees its Sharesave scheme.

Newspad reported in the previous issue that 2,000 employees at **Sports Direct**, the tracksuit and trainers retailer founded by Newcastle United FC owner **Mike Ashley**, had been awarded a share scheme equity bonus pot worth £133m. Pre-tax record profits, which rose 40 percent to £207m, meant that an average full-time employee earning £20,000 pa at Sports Direct pocketed 12,000 shares, worth more than £75,000 at current market prices. Share scheme participation at Sports Direct is restricted solely to full-time permanent employees, who comprise *ten percent* of the workforce. The 20,000 other employees, engaged on 'zero-hours' contracts, are ineligible for participation in the scheme. Zero hours are widely used in the charitable and public sectors as well as in retailing. The share scheme gives broad discretion to managers to exclude employees if their performance is considered 'unsatisfactory,' unusual for an all-employee scheme. On the other hand the share scheme that Sports Direct started in 2009 is many times more generous than the much-lauded staff bonus paid in cash by the John Lewis Partnership. The Sports Direct payout is in addition to the average award of £15,000 in shares made last August. More payouts are on the cards for full-time employees from Sports Direct's ongoing performance-based share scheme programme, as the retailer said it was certain that it had hit its target of underlying profits of £270m for the year to April 28.

Around 550 UK employees of bookie **William Hill** are to share a £3.5m payout from their three year Save As You Earn (SAYE) contract after its share price rose from £1.48 to £4.86 between July 2010 and July this year.

Changes to tax advantaged share schemes: Finance Act 2013:

The Finance Act 2013 made many changes to the tax advantaged share schemes following the recommendations made by the Office of Tax Simplification. HMRC published reminder guidance to the share schemes industry about the implications. In summary, these changes include:

*Removal of the statutory £1,500 annual dividend reinvestment limit for the Share Incentive Plan (SIP).

*Greater flexibility around the share price to be applied for shares awarded during SIP accumulation periods.

*Changes to the rules concerning retirement and tax advantaged early exercise of Save As You Earn (SAYE) and Company Share Option Plan (CSOP) options, or the withdrawal of shares from SIP.

*Broad alignment of the 'good leaver' rules for SIP, SAYE and CSOP.

*New tax advantages for SIP, SAYE and CSOP participants after certain cash takeovers of a company.

*Allowing tax exemption for certain restricted shares in SIP, SAYE and CSOP.

*Removal of the material interest rules for SIP and SAYE and alignment of the material interest percentage for CSOP and Enterprise Management Incentives (EMI) at 30 per cent.

*EMI participants will now have 90 days following a disqualifying event to exercise EMI options with tax advantages.

Most of these changes were effective from Royal Assent to the Finance Act on July 17. Detailed guidance on these changes will be published shortly.

Taken together, these changes give a key boost to share plans in the UK.

Self-certification

The current HMRC approval process for SIP, SAYE and CSOP will be discontinued. Instead companies will be asked to confirm that the scheme meets certain conditions as part of the online registration process. Confirmation will be required too where a company notifies HMRC of certain amendments to any scheme, which employers will be required to do via the online filing of their annual share scheme return. HMRC has not yet confirmed when its scheme approval process will be discontinued, however companies may want to seek guidance from their advisors and/or HMRC regarding any new approved schemes or amendments to existing terms. The HMRC Share Schemes team can be contacted via: Hasmukh Dodia, Employee Shares & Securities Unit, HMRC, Room G53, 100 Parliament Street, London, SW1A 2BQ Email: Shareschemes@hmrc.gsi.gov.uk

Centre member **YBS Share Plans** issued a summary of the impending HMRC employee share schemes online filing and registration changes:

- From April 2014 – employers will be required to register both new and existing share schemes with HMRC

- Schemes include SIP, SAYE, CSOP, EMI and non-tax advantaged arrangements, presently recorded on form 42

- Registration is required to enable online filing of annual returns; it is likely to be no more than a one-off provision of basic information through the PAYE Online service

- When employers log on to the registration process they will be presented with various options including both registration of an employee share

scheme and, subject to meeting certain conditions, the self-certification process

- Employers must have registered and certified the scheme no later than 6 July following the end of the tax year during which the first award or grant was made
- Online filing will also be mandatory for all employee share schemes reportable under the annual share schemes process. From April 2014 – employers will have the ability to submit EMI 1 online, and this will be mandatory when legislation is enacted
- Forms 34, 35, 39, 40 and 42 must be submitted online from April 2015

Information currently required on completion of the above forms is under review, along with the development of online intelligent forms, which is expected to reduce the current form completion faced by employers offering share schemes.

The government's **Employee Shareholder** scheme, dubbed 'Shares for Rights,' went live on the first of this month. Employees who agree to surrender certain employment rights will be entitled to receive at least £2,000 worth of shares in their employer's company. Income Tax and NICs will not be charged on the first £2,000 of shares received by employees under the new scheme. Capital Gains Tax exemption will apply to up to £50,000 worth of shares awarded by an employer to an employee under the scheme. More guidance on the taxation of employees gaining the Employee Shareholder status will be published on the HMRC website shortly. Another row over the scheme broke out days before the launch when the Lib-Dems pledged to repeal the legislation if they were part of the next government in 2015. Some MPs claimed that Employer Shareholder status would be hijacked by executives, rather than by production line employees, resulting in a loss of up to £1bn in tax revenue.

On the move

The Esop Centre welcomes **Harry Atkinson**, who will work with **Juliet Wigzell** in Centre research and administration work at its Kings Cross HQ. Harry's email contact address is hatkinson@esopcentre.com and by phone at: +44 207 2394970.

By mutual agreement, **Leslie Moss** is leaving Centre member **Aon Hewitt** at the end of September. This is the result of post-merger restructuring, which means that Leslie's post - Practice Leader, Performance and Reward - is becoming redundant. He will resume his former career as an independent HR consultant, advising on mergers & acquisitions and HR, as well as compensation and benefits, including share plans. He aims to network with like-minded specialists in other areas of HR in order to offer a broad service. Leslie told *newspad*: "It's a very amicable parting of the ways and the firm have been generous. I will retain a continuing working relationship with Aon as an associate, working with their clients on areas of personal expertise not replicated in the firm." The

Centre wishes Leslie – a frequent speaker at our international conferences - great success in his new role. **Andrew Udale** will be Aon's main future contact with the Centre.

Howells Associates, the leading executive share schemes administration, reporting and communication services company, has announced that **Graham Ward-Thompson** has joined the company as a non-executive director. Graham is a well-known and respected senior practitioner in the Eso field and has recently retired as Reward and Compensation Partner of **PwC**, where he spent more than thirty years. Prior to his retirement Graham was responsible for PwC's regional reward and share plan practice and for all national work on the Share Incentive Plan and Enterprise Management Incentive scheme. Graham developed and edited PwC's annual pay and incentive review in UK quoted companies - "Sharing in the Boardroom". Peter Howells, Chairman of Howells Associates, said: "I am of course delighted that Graham has agreed to join our Board. He is one of the best communicators I know and in his time at PwC he built a reputation as one of the country's leading specialists in the field of senior executive reward. His advice has strengthened the reward strategy of many companies, large and small, many of whom have been joint clients. We will find his advice and immense experience invaluable in ensuring that we continue to develop services which help our clients maintain best practice. And – equally important - he's a rather nice bloke". Graham Ward-Thompson said: "I'm thrilled to have this opportunity. I've known Howells for years and have always been impressed with the way they operate. They've consistently given my clients a top quality service and have grown, not through acquisitions but organically and by investing in their people; now I have the opportunity to contribute to this and bring to them the experience I have gained in my life as a share scheme advisor."

Congratulations to one of France's keenest supporters of employee financial participation, **Schneider Electric**, which acquired the UK engineering group **Invensys** for £3.4bn. Schneider's equity director, **Caroline Labregere**, delivered a case study on the company's worldwide Eso plan at the Centre's summer conference in Paris last year. More than one third of Schneider Electric's 130,000 strong workforce in 60 countries are share scheme participants. Collectively, the employees own 4.55 percent of Schneider Electric and seven percent of the voting rights.

Centre member **Pinsent Masons** is holding a free briefing session in London on **Monday September 16** about the new government initiatives aimed at increasing employee share ownership in unlisted UK companies. "With the imminent introduction of 'Employee Shareholder' status, this bespoke seminar will provide an overview of those initiatives, commentary on what they will mean in practice and

insight into both the tax and commercial issues to consider when designing equity incentive arrangements in unlisted companies - regardless of whether the company is an owner-managed business, private equity-backed or managed by serial entrepreneurs,” said Pinsent’s share schemes partner, **Matthew Findley**. Specific issues to be covered include the relevance of Enterprise Management Incentive (EMI) share options; the possible demise of the employee benefit trust and what the future might hold as the Government continues to respond to the Nuttall Report. Registration is at 1600; the seminar is from 1615 until 1800, followed by a drinks reception until 2000. The venue is Pinsent Masons LLP, 30 Crown Place, London EC2A 4ES. The link to register is: <http://tinyurl.com/pr9zrux>

December 4 this year will mark the 100th anniversary of the birth of **Louis Kelso**, the Denver, Colorado, born inventor of the Employee Stock Ownership Plan (Esop), which enables cash-strapped working people to buy-out, over time, their employer’s equity and pay back via the dividend future yield. Kelso’s formative years occurred during the Great Depression, which marked his thinking on the impacts of dysfunctional capitalism and inadequate consumer demand. Professionally, he was not only an economist and corporate lawyer, but also an author, lecturer and merchant banker. His first Esop, in 1956, enabled the employees of a small privately held newspaper group to buy out the business from its retiring owners. The Kelso-Professorship and the Centre for Interdisciplinary Polish Studies plans to commemorate the pioneering work of Louis Kelso in law, economic theory and finance and discuss the relevance of his concepts to the European Union today. Meetings with Kelso inspired Malcolm Hurlston CBE to bring the Esop to Britain and adopt his slogan: ‘the wages of capital’. *Malcolm will attend a reception in honour of Louis Kelso on Wednesday December 4 at the European University Viadrina, Frankfurt (Oder).*

Almost 20 percent of Britons aged over 65 are still in work and one in seven have no idea when they will be able to retire, revealed a report by *Barings Asset Management*. More than one million over-65s are still working, a record number and an increase of 100,000 during the last 12 months alone. One third of Britain’s full-time employees have no pension scheme other than the state.

CONFERENCES

GUERNSEY - October 11

Bookings are rolling in for this year's annual ESOP Centre/STEP Guernsey seminar, which will take place on the **morning of October 11** at the St. Pierre Park Hotel, St. Peter Port. Expert speakers will cover a range of topics, tailored towards an audience comprising mainly employee benefit trust practitioners.

The programme includes: *The macroeconomic context for employee share ownership; Positive outcomes from employee benefit trust (EBT) exits; employee shareholder contracts; EBT trust law update; and the Office of Tax Simplification (OTS) review of unapproved share schemes and its outcome.*

Confirmed speakers include: David Craddock of **David Craddock Consultancy Services**; Graham Muir of **Nabarro**; Paul Malin of **Haines Watts**; Alison MacKrill of **Carey Olsen**; and Jonathan Fletcher Rogers of **Abiss Cadres**.

Ensure you are up to date with the latest developments in these areas by attending this **CPD-accredited** course. **Attendance prices:** £295 for Centre/STEP members; £425 for non-members. To make a reservation, email esop@esopcentre.com - giving your delegate name(s) and contact details. A member of the Centre team will then respond.

DAVOS - Feb 6 & 7

An impressive line-up of speakers is in place for the Centre’s 15th annual global employee equity schemes conference, which takes place in Davos Platz, Switzerland, on Thursday February 6 and Friday February 7 (2014). **Only four speaker slots remain to be filled.** Centre member service providers can save almost £200 on their package deal admission fee if they opt to fill one of the maximum 15 speaking slots on offer. Plan issuers can make a similar saving if they commit to a speaker presentation too. This popular event will again take place at the five star Steigenberger Belvedere Hotel. The package deal speaker fee for member service providers is **£955 and no VAT**, whereas the same person would pay **£1150** as a delegate. The agenda will include many of the following topics:

- *The reconstruction of executive incentives: Institutional investors, media reaction, benchmarks and remuneration committees*
- *Risk as a component in executive incentive plans*
- *Latest legislation and regulatory developments impacting global employee equity*
- *Case studies on recent global and international broad-based employee equity plans*
- *Cross-border equity award taxation issues for mobile employees and their employers*
- *Corporate governance issues in US and EU employee equity plans*
- *Employee share ownership developments in Europe*
- *Offshore trustees: What can they bring to the party now?*
- *Communicating equity plans to employees in the recession*

However, speakers may wish to present on other issues, so inform us asap if you have a topic on which you/a colleague would like to speak.

Slot commitments have been received from:

Alasdair Friend & Narendra Acharya of **Baker & McKenzie LLP**

Justin Cooper of **Capita Registrars**
Fred Whittlesey of **Compensation Venture Group (US)**

Martin Sheridan & Martyn Drake of **Computershare**

Mike Pewton of **GlobalSharePlans**

Martin Osborne-Shaw of **Killik Employee Services**

Mike Landon of **MM & K**

David Pett of **Pett, Franklin & Co. LLP**

Kevin Lim of **Solium Capital (UK)**

Alan Judes of **Strategic Remuneration**

The package deal comprises: two nights accommodation in the Steigenberger Belvedere Hotel (Feb 5 & 6 on half-board, single occupancy basis) + entrance to all conference sessions + cocktail party (partners welcome) + coffee break refreshments + bound delegates' handbook:

Speakers - Centre member service providers **£955** and no VAT; Eso plan issuer speakers **£695** and no VAT.

Delegates - Centre member service providers **£1150** for the package deal; Plan issuer members **£695** and no VAT. Equivalent delegate rates for **non-members** are **£1,495** for practitioners and **£895** for plan issuers.

These fee levels are still well below those applying in more commercially run conference operations, so why pay more elsewhere? Email your Davos speaker proposals and/or your delegate registrations now to fhackworth@esopcentre.com, with a copy to esop@esopcentre.com

Bonus corner

Companies deferred paying out about £1.7bn worth of bonuses until after the start of the new tax year last April, in order to save their staff from paying the old 50 percent top rate income tax band (now abolished), said the **Office for National Statistics (ONS)**. Thus HMRC was deprived of about £85m extra tax revenue as the bonuses concerned could only be taxed at 45 percent maximum. Of this total deferral, banks and insurers delayed collectively about £700m in bonuses, while non-financial firms deferred paying out £1bn worth of bonuses, added the ONS annual bonus survey. It revealed that in the year to March this year, bonuses overall were just one percent higher – at £36.9bn - than in the previous year, but after adjusting for deferrals, the real increase in bonuses was four percent. Financial services continued to enjoy the biggest bonuses - £11,900 on average, which was slightly down on the previous year – with oil and gas employees in second place in the bonuses league - £6,700 each on average.

The **Chartered Management Institute** said the gender pay gap was being aggravated by the bonus gap. Male managers were paid an average bonus of £6,442 last year compared with £3,029 for women, on top of basic salaries almost 25 per cent higher. The study of 43,000 managers showed that male managers stand to earn over £141,000 more in bonuses than women doing the same job over the course of a working lifetime. The gap in pay and bonuses is greater at senior levels, with

female directors paid an average bonus of £36,270, while men are given £63,700, said the report.

The world's largest mining firm, **BHP Billiton**, cut the long-term bonuses of its ceo and management committee by 35 percent. The firm said the payouts had been cut because the return to shareholders had dipped in the five years to June 2013. Earlier, the firm reported a 30 percent fall in full-year profits. BHP, along with other mining firms, has been hurt by a fall in commodity prices amid a decline in demand from key markets such as China. Under the company's five-year incentive plan, BHP had to deliver a shareholder return that exceeded a group of peer companies by an average of 5.5 percent for the five years to June 30. The ceo and the management committee would have been entitled to a full bonus if that target had been achieved. BHP's return fell by 9.4 percent during the period, but that was much better than the 44 percent decline that its rivals saw - which meant that it had outperformed its peers. The company said that while it recognized that total shareholder return performance was delivered in a difficult business environment, it felt that more closely aligning the experience of shareholders and executives was important. The bonuses "reflect a more modest approach to remuneration befitting the times", it added. Ceo Andrew Mackenzie gave up shares worth £941,000, but he was awarded new shares worth £4.6m.

A media storm broke after the revelation that nine executives working for the charity **Save The Children** were handed bonuses collectively worth £163,000 last year. Ceo Justin Forsyth, former advisor to Tony Blair, earned a total £142,000, of which £22,650 was a performance-linked bonus. He is one of six staff working for the 14 charities who make up the Disasters Emergency Committee who earned more last year than PM David Cameron. *Save The Children* increased bonus payments to its top executives by more than one third compared to the previous year. Charities Commission chairman William Shawcross said that the bonus-enhanced salaries of charity bosses were disproportionate to declining donations and risked bringing the charity world into public disrepute. However Save The Children said that it had no bonus pool as such and that 20 percent of staff salary levels were determined by annual performance. In 2011, the nine executives whose total reward was affected by the performance scheme had received bonuses worth in total £120,000, it added. The top charity salary last year - £184,000 - went to Sir Nick Young, ceo of the **British Red Cross**. The number of staff at eight leading charities earning more than £100,000 per year jumped by 72 percent – from 22 to 38 – in just two years, *The Telegraph* revealed. Almost half of these work at the **National Trust**, whose former boss Dame Fiona Reynolds saw her pay rise to £180,000 when she left last year.

New **Aviva** ceo Mark Wilson warned that no one in his

company would get a bonus this year unless they hit division-based targets linked to a £400m cost-cutting plan which will see more than 2,000 jobs sliced from the insurer's 32,000 strong global workforce.

Uncertainty still reigns over the timing for the sale of the UK taxpayers' 41 percent stake in **Lloyds Banking Group** as recent stock market volatility took the share price temporarily back down below the average 73.6p per share paid by the last Labour government to save Lloyds from the scrap heap during the 2008 financial crisis. Lloyds is ready to dispose of 631 bank branches to the new TSB, to meet EU competition rules.

Chief executive reward rose by 16 percent at the biggest US companies last year and is now "out of control" as the average ceo among the 100 largest US companies raked in \$US15m, said the *New York Times*. Critics of the top executive pay bonanza opened a new line of attack against the "excesses" by pointing out that US taxpayers subsidise such sky-high compensation because corporations deduct the cost of the payouts from their income tax payments. Hence the rest of the population has to fund the tax revenue gap by paying higher income tax than it otherwise would, runs the argument, which has reached Congress. The **Economic Policy Institute** estimates that US\$121bn in executive compensation was deducted from corporation tax bills between 2007-10 and that of this huge amount, 55 percent was deducted for 'performance' based compensation awards. The political battleground centres around Section 162 (m) of the US Internal Revenue Code, which allows corporations to deduct all executive compensation above US\$1m per year, *provided the excess is tied to company performance*, despite the difficulties in defining exceptional performance. Companies have circumvented the rules with ease - in some cases by fixing performance awards based solely on share price movements; others by back-dating executive stock option grants to match past dips in the company share price, so that gains are easier to register and others by 'low balling' earnings estimates so that low thresholds are set for performance pay-outs. Republican senator Charles Grassley said that Section 162 had "more holes in it than a Swiss cheese." Who is now being blamed for this mess? – step forward (again) ex US President Bill Clinton who, when in power, defied expert warnings that any compromise on tax arrangements for executive performance payouts would spark off a corporate reward bonanza.

HSBC may raise its bankers' base salaries in a bid to limit the impact of new rules, which will cap bonuses at a maximum of double their salaries. Chairman **Douglas Flint** said increasing salaries was one of the possibilities in a range of options the bank was considering. "We have to be competitive," Mr Flint said, as the bank unveiled a ten percent rise in pre-tax profits to £9.2bn. The rise came despite revenues falling. The regulations, implemented by the EU, will come into force from the start of next year. Mr Flint

said that 80 percent of the bank's profits came from non-European markets, making it "very uncomfortable" in regions, such as Asia and the US, where its competitors did not face the same restrictions. "These legislative changes...could have a highly damaging impact on our competitiveness position in many of our key markets, including those outside Europe," he added. HSBC said it would consult on how best to protect its competitive position. From the start of next year, EU rules within the Capital Requirements Directive (CRD) IV will limit bonuses paid to all bankers employed by EU-based institutions to 100 percent of their base salary, or 200 percent if shareholders expressly approve.

New **RBS** ceo Ross McEwan will receive an annual salary of £1m, but has asked not to be considered for any bonus when he starts in October, nor for two years after that. He will only consider taking a bonus in 2016 – in shares – if performance targets are met. However, *newspad* remembers that McEwan was awarded a £3m equity based golden hello when he joined RBS from the Commonwealth Bank last year. He then received 450,000 share options, which he can vest at the end of this year and a further 1m options, which he can vest between June this year and August 2015. A government announcement is awaited on when and how the first tranche of the taxpayer's 81 percent holding in RBS will be sold off, though **Lloyds** will be first off the blocks...

Royal Mail ceo Moya Greene said in a leaked private email to a correspondent that she had been "deeply offended" by criticism of her total reward which was almost £1.5m in the last financial year. Responding to a member of the public who opposed the £250,000 housing allowance she was offered and which she then paid back, Ms Greene said that she was unimpressed over the amount of time it took Whitehall civil servants and ministers to settle her reward package after she left her native Canada in 2010 to take up the Royal Mail job. Compensation arrangements in commercial companies in which the government had a shareholding were "hopelessly broken," after having to wait 15 months for officials to explain on what basis she would be paid, she said.

EBTs and Inheritance Tax planning

On June 27, HMRC published its revised employee benefit trusts (EBTs) section of the Inheritance Tax Manual. The previous version was withdrawn in 2011. The new guidance sets out the requirements that a trust must satisfy in order to be exempt from tax under section 86 Inheritance Tax Act 1984. The HMRC website reference is: <http://tinyurl.com/oy5cu3t>

FATCA Regulations come into force

The International Tax Compliance (US) Regulations 2013 SI 2013 No 1962 were laid before the House of Commons on August 7, and come into force on

September 1 this year, said Centre member **Deloitte**. The new regulations ratify the agreement reached between the UK and US Governments to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA). These regulations reflect a six-month deferral of the implementation of FATCA until June 30 2014. The amended time frame will apply to the agreements the UK is negotiating with the Crown Dependencies and Overseas Territories. See <http://deloi.tt/13G1S6u> Fear of FATCA is already forcing six million expatriate Americans to rethink how much they tell the US Internal Revenue Service (IRS) about their offshore financial affairs. The number of US expatriates who – after hearing about FATCA - filed a Foreign Banks & Financial Accounts Report to the IRS doubled in 2011 to 600,000. UK based share scheme administrators (described as Foreign Financial Institutions under FATCA) are working overtime to ensure that they comply with all the bureaucratic demands imposed by the regulations.

French Eso savings switched to car purchases!

The French government quietly slipped out a legislative change, just before the Chamber of Deputies' summer recess, which will allow certain groups of French employee financial participation savers to withdraw up to €20,000 net from their Eso savings accounts – so that they can buy cars, preferably French ones. EFP participants will be given until December 31 this year to inform their employers that they wish to withdraw money from their employee accounts in order to buy cars and other durable goods, provided they get receipts for their purchases. Such is the desperate state of the French auto industry – where thousands more redundancies are expected this autumn – that President Hollande has authorised the move in order to boost sales of Renault and Citroen vehicles.

Meanwhile, the 2013 French Finance Law worsened the previously favourable tax and social security regime for qualifying Restricted Stock Units (RSUs) and Stock Options (SOs) granted in companies operating in France on or after September 28 last year. As a result of the new rules, RSUs and SOs are significantly less attractive methods of remunerating employees and managers in France than before, said lawyers Latham & Watkins LLP. France's new regime imposes higher tax and social security contributions for qualifying SO and RSU beneficiaries and may be further modified. The speculation is that French corporations will turn their backs on these types of plans in favour of alternative types of remuneration, such as deferred cash bonuses to incentivize key employees. Non-qualifying plans are already subject to the same tax and social security treatment as salary and therefore are not affected by the new rules. For qualifying SOs, any acquisition gains and any sale gains are subject to tax in the year the shares are disposed of, not the year in which the options are

exercised. This timing is applicable for RSUs, i.e., any acquisition gains and any sales gains are both taxed when the shares are disposed of, not when the RSUs vest. Under qualified RSU plans, the shares must not be transferred to the employee until a minimum of two years have passed from the RSU's grant date and, once transferred to the employee, the shares must not be sold before the expiration of an additional two year holding period.

*A new French law, published in the Official Journal of June 16, establishes a duty for SA and SCA companies to organize the election or the appointment of employees' representatives on their boards of directors or supervisory boards if they and their direct or indirect subsidiaries have more than 5,000 permanent employees in France or 10,000 permanent employees worldwide.

Warning on taxation of equity awards post US mergers

There has been an increase recently in the number of strategic mergers and foreign inbound investments in the US. These types of transactions raise numerous US tax issues relating to equity compensation. **Taxand USA** said that, if not handled appropriately, the tax exposure to the acquired corporation and its executives can be significant. Incentive Stock Options (ISOs) are stock options that are eligible for favourable tax treatment under Sections 421 and 422. Many requirements must be satisfied for an option to qualify as an ISO, and they are not taxed when exercised. In the event an acquiring corporation assumes the outstanding ISOs, the favourable tax status of the ISOs will only be preserved if the assumption and rollover complies with the requirements of IRC Section 424.

Alternatively, the transaction may provide for all outstanding stock options to be cashed out at the close of the deal. In this situation, the employee receives ordinary income equal to the cash-out payment (the excess of the merger consideration over the exercise price) for all outstanding stock options. In the case of an ISO, the cash-out will disqualify the award, and the taxation rules related to nonqualified stock options will apply. The cash-out of stock options can be paid at the time of the merger or on the same schedule and conditions applicable to the shareholders' earn-out payment.

Frequently, restrictions related to restricted stock lapse when an acquisition occurs. Without a Section 83(b) election at grant, the accelerated vesting of the restricted stock will result in ordinary income to the employee at the time of vesting (equal to the number of shares vested times the merger consideration). The amount of ordinary income recognised by the employee is deductible to the company in the post-close period. When a corporation is acquired by another company, both the corporation and key executives may be subject to significant adverse tax consequences under the

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golden parachute provisions of IRC Section 280G. Under these provisions, a payment to an executive of \$1 above the golden parachute safe harbour limit creates large penalties for both the executives and the company. Depending on the circumstances and the number of executives affected, the cost to the company and the executives can be significant.

Private equity deals exposed

A team of academics urged the private equity industry to be more transparent after a report claimed that a large section of it increases unemployment, while actually worsening the performance of the company taken over. In the first statistical analysis of the private equity's institutional buy-outs (IBO), which made up nearly half of all public-to-private buy-outs during the researched decade, Geoffrey Wood, of Warwick Business School, Marc Goergen, of Cardiff University and Noel O'Sullivan, of Loughborough University, discovered that when they compared 105 publicly-listed firms - that went through a buy-out between 1997 and 2006 - to a control group of their industry rivals, the buy-out firms fell further behind after the takeover. The study found that four years after the buy-out the performance gap between the two groups had tripled, from £29,000 - as measured by turnover per employee - to £89,000. This was coupled with 59 per cent of the private equity IBO firms reducing the size of their workforce in the first year compared to 32 per cent in the control group.

The British Venture Capital Association (BVCA) dismissed the paper as "partial and unrepresentative", saying that by the time of the first year post buyout, the sample number of IBO companies had fallen to 68 and by year four to 56. Professor Geoffrey Wood responded: "The drop in our sample is a reflection of the secretiveness of the private equity industry and the difficulty of tracing target firms after their acquisition. We have made a colossal effort to trace firms after their acquisition, but in some cases a lack of disclosure, often combined with a move of the target firm's headquarters to tax havens such as Nassau or Luxembourg, has prevented us from obtaining data post-acquisition. The cynic would state that some private equity houses make a huge effort to hide their target firms within a chain of shell companies. We encourage the BVCA to improve disclosure by the industry so that studies such as ours can be more representative. We do not claim that our study is representative of the whole private equity industry; the focus of our study is on institutional buy-outs. IBOs are acquisitions by private equity houses of publicly quoted UK companies. Hence, contrary to some of the existing studies we do not include relatively small, unquoted private companies. Some of the companies covered by

our study include Debenhams, Pizza Express and United Biscuits."

The BVCA said the authors started with the hypothesis that private equity is damaging to employment, wages and productivity, and sought to examine only those deals that they believe are most likely to prove this assertion. But Prof Wood said: "Our hypothesis is that *one particular type* of private equity, ie IBOs, is damaging for employment. In contrast to previous studies, we do not amalgamate very different types of private equity. Few would disagree that management buy-outs (MBOs), which do not involve a change in management, are bad for employment. By amalgamating MBOs with other types of private equity, one would equally bias outcomes toward positive employment effects.

This is something we have gone out of our way to avoid. The fact that one activity has mostly positive effects does not provide a justification for ignoring the mostly negative effects of certain expressions of that activity."

The study looked only at the first four years after the buy-out, but the BVCA say the average private equity holding period tends to be five to seven years and the performance of a "significant number of the companies in the IBO sample (40 of 106) are from 2005 and 2006 - meaning the performance of both these and the comparator companies is likely to have been impacted by the global financial crisis".

The BVCA cite a report from September 2012 by the Centre for Management Buyouts and the Credit Management Research Centre which found private equity-backed buyouts achieved superior economic and financial performance from 1995 to 2012 than "comparable non-private equity buyouts and listed companies". They said the study was based on a dataset of 400,299 company-year observations and 30,736 observations of companies that experienced a private equity backed buy-out and accused the academics' study of looking at a small section of private equity activity.

"Again, the BVCA equate private equity with MBOs," said Prof Wood. "The point of our study is that amalgamating IBOs and MBOs is not justified. While there may be fewer IBOs than MBOs the former concern large public firms whereas the latter concern smaller, frequently private held firms. If this makes our study irrelevant then we are happy to accept this criticism."

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

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