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it's our business

newspad of the Employee Share Ownership Centre

Global high tech giants dominate 2017 Centre awards

Google won the Esop Centre's 2017 prize for the world's most innovative all-employee share scheme. Global HR chief Jen Kirk's told the Centre: "*Alphabet/ Google is honoured and humbled to receive this award from your organisation.*" The global internet giant, which has a market cap of $680bn, submitted a bespoke employee share plan designed to deal with its fractional share problem. As each Google share trades at around $1000, even some employees and most outsiders can't afford to buy a single share each month. Google offers its Alphabet (includes Nest, Calico and XLabs) employees the choice either of receiving fractional shares or a cash refund. For a more affordable $300, an employee might elect to receive 30 percent of the full Google single share value, including a pro-rata dividend share. In addition, Google deploys an internal share market mechanism, which allows participants to sell their shares back as and when.

Other global reach high tech companies to feature among the winners, or those commended, at this year's Centre Awards were **Nokia, Valero (**US), **Telefonica** (Spain), **Amadeus** (Spain), **Sage** (UK) and **Teva (**Israel)**.**

The glittering black-tie champagne reception and dinner, held in the magnificent library of the **Reform Club** in Pall Mall, brought together members and guests – representing UK and international plan issuer companies and their expert advisers – to recognise the best in employee share ownership.

This year's Guest of Honour was **Phillip Blond**, influential 'Red Tory' and director of the think tank ***ResPublica.*** Mr Blond founded ResPublica in 2009 and is an academic, journalist and author. He wrote *Red Tory* (Faber and Faber 2010), which sought to redefine the centre ground of British politics around the ideas of *civil association, mutual ownership and shared enterprise.*

The evening was hosted by **Sir Graham Melmoth,** former chairman of the National Council of Voluntary Organisations and outstanding ex ceo of the Co-op Group. Not long ago, '*the man who saved the Co-op'* was back in the news when he accused its leaders of blocking prominent members from standing for the board and undermining the democratic principles of the 171-year-old mutual society. Sir Graham presented the winners with their certificates.

Centre chairman, **Malcolm Hurlston** told diners how pleased he was to see them all at the 16th Annual Awards dinner of the Esop Centre: "I am delighted to be able to welcome you here for another year at the Reform Club whose very name lends itself to the right interpretation of our role: not just to do things more but also to do things differently. This is the occasion on which we all get together to celebrate the very best in all employee share ownership (Eso), which has long been our focus."

He identified a major new role for Eso: "I can say that

From the Chairman

With the electoral fortunes of the two main parties hinging on the votes of the just about managing we have a one off opportunity to gain serious traction for all-employee share schemes which can spread the wages of capital. I shall be working with ResPublica to see how best members can fund an initiative from within the party which will convince the government. The Centre too would benefit from stronger funding such as accompanied our launch. Churchill may have been an HR nightmare - smoker, funny clothes, drunk, in bed till noon (perhaps that was an earlier version of homeworking) but he was dead right about "give us the tools...."

Malcolm Hurlston CBE

READERS' SPECIAL OFFER

British Isles employee equity symposium

Book by Wednesday **November 8** for the Centre's British Isles employee equity symposium on Thursday & Friday, November 16-17 to receive **10% discount** on ticket prices.

Book your place by sending an email to: britishisles@esopcentre.com citing the code '**newspad**'. Or call us on +44 (0)20 7239 4971.

Details of the event are on page 5 of this issue.

the world has caught up with us over the last couple of years with inequality taking centre stage on the one hand and an increasingly uncertain financial future facing increasing numbers of people on the other. To both these major world problems, all-employee share ownership is part of the solution and it is our role to determine how big a part.

“This year I am grateful to Sir Graham Melmoth, an old friend for many years for agreeing to be our host. Most recently Graham has chaired the National Centre for Voluntary Organisations which is the nonprofit equivalent of the Confederation of British Industry, but he is best known for his powerful leadership of Britain's co-op when it faced an existential threat. Graham not only defeated the dastardly predators but saw them in jail, with a city bank and a city law firm involved in the wrongdoing suitably humbled. Graham left the the Co-op in a good health to which it is yet to return.

“Our guest of honour typifies the opportunity we now have in the UK to gain traction for our cause. Phillip Blond runs the think tank of the Conservatives left *ResPublica* and is known as the red Tory. We are at a stage in the UK when the success of both major political parties depends on people who are *just about managing* - in Theresa May’s words - perhaps natural Labour supporters whom the Conservative Party has this short-term opportunity to gain.”

Mr Hurlston thanked the three Awards judges - **Anna Watch** of **BT; Damian Carnell** of **Willis Towers Watson** and **Stuart Bailey,** of **White Oak Consulting -** who were all present at the dinner. The chairman then called upon Centre international director **Fred Hackworth** to read the award citations about all the finalists and **Stuart** to explain, in each case, why the judges had chosen each winner in preference to other candidates.

He added: “Before the Awards begin, may I give you one important piece of news : many of our interactions are with HMRC, which held its fiscal forum earlier today. Some months ago there was dismay when HMRC withdrew its pre-transaction valuation service and we have worked hard since then to make things better.

“The Centre brought in other leading UK bodies in employee share ownership and jointly agreed to set up a worked examples group. It is a sign of how well we have done that its formation was announced today by HMRC itself. The idea came from Centre members and I'm delighted to be able to tell you that my firm, which manages the Centre, is providing unpaid the secretariat to the new group.

There were five Centre award categories:

Best all-employee international share plan *among large companies whose share plan entry has participants in at least three countries.* There were four finalists in this category:

Amadeus - Amadeus is Madrid based and provides the software which underpins most travel. Its Share match scheme features a twelve month purchasing period followed by a twelve month holding period. At the end of the holding period employees get one share for every two they have held. In almost 30 countries, the current edition of the plan (2017-2019) has an impressive 41 percent uptake.

Nokia – Nokia employs 100,000 in 100 countries. Its Employee Share Purchase Plan ‘*Share in Success’* is offered in 54 countries. Around 30,500 employees were registered in the plan by the end of last year, which translates into a 36 percent enrolment rate. Its ESPP share match scheme is now in its fifth year. Nokia gives employees one free share for every two they have bought and held through the plan.

The third finalist was **Sage -** the British multinational based in Newcastle upon Tyne, which employs more than 13,000 worldwide. It***s*** SAYE plan *Sage Save and Share* has a three year saving period, the share price is discounted by 20 percent for share purchases, with no obligation to buy shares at the end of this period. The new SAYE plan has achieved a 21 percent take-up. Sage was nominated by Global Shares.

Finally, in this category, was **Telefonica** (*a previous Centre Award winner)* the Madrid based telecommunications provider. It is one of the largest phone operators and mobile network providers in the world with 120,000 employees. Its share matching scheme rolled out in 22 countries is called the *Telefónica Global Employee Share Plan*. It offers 1:1 matching for each share held by an employee in the plan. It had a particularly impressive 60 percent take up by staff in the recently acquired Canal company.

Judges’ Reasoning: After examining these entries carefully, the judges concentrated on the two which stood out for them: They awarded a high **commendation for Sage** for their global Save and Share plan. They were particularly impressed at how a tried and tested share plan design had been extended globally in a new way. They observed that if the Centre had an award for the ‘best *new* share plan,’ then Sage would have won this award hands down.

Julie Shepherd and Tina Clayton, both from Sage and John Meehan from Global Shares collected their certificate.

The overall **winner** of the best all-employee international share plan was **Nokia**. It used the plan as an agent of ‘corporate glue’ for a re-shaped group structure. Nokia launched its employee share purchase plan (ESPP) in 2016 to encourage Eso, plus employee commitment and engagement and allowed participating employees to purchase company shares via payroll deductions at a discounted price with a generous matching offer.

The award was collected by Marcus McEvoy and James Robertson of Computershare on Nokia’s behalf.

Best all-employee share plan among companies who installed Eso plans with participants in no more than two countries). Three finalists attracted the judges’ attention. They were:

Phillips66 - an American multinational energy company, producing natural gas and petrochemicals, headquartered in Houston, Texas and which employs 14,000 worldwide. The Phillips plan is a free share plan combined with a Share Incentive Plan, which has a contributory element. It has an impressive 99 percent take-up.

River and Mercantile Group (nominated by Capita) is an advisory and asset management business with a range of services, from consulting and advisory to fully-delegated fiduciary and fund management. It has a large client base, predominantly in the UK, especially institutional pension schemes. River & Mercantile submitted a Sharesave scheme, for which 25 percent of eligible employees enrolled in 2017, on top of the 60 percent who had already enrolled in 2016.

Valero Energy Corp is a Fortune 500 international manufacturer and marketer of transportation fuels, other petrochemical products, and power. It is headquartered in San Antonio, Texas and employs 10,000 people worldwide. Valero submitted a SIP plan for this award. It is a tax advantaged plan and the participation rate is an extraordinary **99.8 percent** and the plan gives equal opportunity for employee share ownership to all UK employees regardless of seniority.

The Judges' verdict was that Valero's plan impressed the most: They said: "Valero's plan has several innovations. Its employee participation rate is extremely good and demonstrates fairness to all.

Computershare's James Robertson collected the award on Valero's behalf.

Best share plan communications of the year

The three finalists were:

Ahold Delhaize, a Dutch food retail group, operating supermarkets and e-commerce businesses. Its 21 local brands employ more than 375,000 associates in 6,500 stores in 11 countries. For this award Ahold Delhaize submitted communications of its GRO plan following the merger of Ahold and Delhaize.

Telefonica submitted the communication strategy of its share match scheme: Telefónica Global Employee Share Plan, in 22 countries. Communications included internet microsite, inspirational video, an investor day event for employees plus explanatory video, emails, web chat and a PR campaign.

Teva Pharmaceutical Industries is a generic pharmaceutical company, with a US$22bn turnover and which employs 43,000 worldwide. Interestingly its plan was used as a tool in preparing for and executing a merger/acquisition. Teva was nominated by Equatex.

Judges' comments:

The judges commended **Teva** for the way in which the plan was communicated globally. *Teva's certificate was collected by Paul Stoddard of Equatex*

The **winner:** the judges were impressed by **Telefonica**'s good communications, with ceo Cesar Alierta leading presentations at the company's 'Investors Day' and gaining permission to use parts of the popular TV show *Game of Thrones* in its promotional campaigns. *Telefonica's award certificate was collected by Miguel Benzal of Telefonica.*

Best use of video communication

For this award there was only one Finalist:

Amadeus IT Group - submitted its video show that accompanied the fifth edition of the share match scheme. A total of 5,159 employees enrolled this year, producing a 41 percent uptake, in 28 countries.

The judges' comment was: Amadeus's share matching plan was straightforward in messaging. It had a "very personal approach and less corporate. It displayed a simple highly encouraging level of engagement with the on-line process".

The award was collected by Britt-Marie Kronqvist Merino of Computershare on behalf of Amadeus.

Most creative share plan solution

There were two finalists:

Google. It submitted a plan for this award involving the unusual offer of fractional shares to employees who are given a choice between receiving fractions of the high-value shares or a cash refund. Google is so successful that its shares now trade at around $1,000 each, beyond the reach even of some of its well-paid employees, which is why Google has offered them the chance to acquire part share rights.

Nokia submitted its 'Share in Success' plan, offered in 54 countries; 30,434 employees were registered on the plan (as of 2016), a 36 percent enrolment rate.

The judges' comment: They were impressed at the creative way in which Google had designed its plan to ensure that more of an employee's investment is quickly linked to the company share price performance.

The final award was won by **Google**, whose HR chief Jen Kirk sent a personal message which was read out by Mr Hurlston. It said "*Alphabet/Google is honoured and humbled to receive this award from your organisation. We would like to extend our sincere thanks to our valued partners who were instrumental in helping us launch the Fractional Shares program: Morgan Stanley, Charles Schwab, Solium and Computershare. The Fractional Shares program has been extremely well-received at our company and employees are thrilled to be able to maximize the Alphabet shares they retain after each vesting event. Thank you for your recognition.*"

Mr Blond echoed the chairman's thoughts on rising economic and cultural insecurity in the UK, as wealth inequalities continued to mount. He said: "No-one in the West believes that wages (by themselves) are sufficient any more. We are facing a wages crisis, the like of which we have not seen since the Middle

Ages. We are looking at re-feudalism - serfdom without the benefits, because nowadays, workers have no assets to sell, unlike their medieval counterparts.

“The economic issue of the future is assets, if we are to make capitalism work, because over the last 20 years or so, the average person in the West has not benefited at all. Employee share ownership is one of the few ideas out there which offers the chance for us to re-energize capitalism. Eso is one of the seven or eight silver bullets which could change things.”

The problem was, he added, that Eso, in the UK at least, had been “treading water” during the past 20 years - “It hasn’t moved on and Eso sadly participation remains a tiny proportion of the UK workforce and so I ask whether you want to do better than this.”

Res Publica and the Esop Centre could work together to help re-boot Eso, he added.

Mr Hackworth reviewed that the Centre had achieved during the year. He said:

“The Centre has been at the forefront of all major developments in the industry, playing a key role in the introduction of the first government-approved scheme – the Statutory Esop – and every other one since then. We have never been afraid to criticise government policy on Eso, whether the issue has been exclusions from approved plan tax incentives, poor use of technology, lack of flexibility or the partial failure to publicise and promote Eso properly across the board. Sometimes ministers have listened, sometimes not.

“Will Mrs May do anything to boost Eso? - She could re-boot the CSOP, which the lower paid find useful because they don’t have to make payments up front. Only persistent Centre lobbying saved the Company Share Option Plan (CSOP) from planned Treasury cuts. For smaller companies, she could improve the rules governing the Employee Ownership Trust (EOT), to make it more commercially viable, as it is an effective mechanism for convincing business owners to sell to their employees.”

The impact of increasing regulatory demands like the new Data Protection Regulation and MiFID II featured strongly in programme for the Centre’s British Isles employee share schemes symposium at White & Case on Nov 16-17, said Hackworth. There were concerns too over whether employee share plans installed with the EU by UK based firms would lose their passporting rights notably over the Prospectus Directive exemption and of course data retrieval post Brexit.

Publications like *newspad* and *newsbrief* allowed the Centre to disseminate its messages, one of which was the seemingly unending struggle for compensation by hundreds of low-paid Roadchef motorway service station staff, whose Esop shares were sold without their knowledge to a Japanese company in 1998.

The Centre considered that executive equity remuneration was within its sphere of influence and the problem there was that major vested awards from LTIPs and other incentive schemes had left major corporations and their advisers facing a nasty political and public backlash.

Successful conferences during the year had included: *Employee Share Schemes for SMEs - held in conjunction with the Institute of Directors:* two *Employee Share Schemes conferences for trustees*, held in Jersey and then Guernsey and the annual international Eso conference, held in Paris with the help of Centre member Clifford Chance, at which delegates heard that the French President Emmanuel Macron wanted to encourage employee financial participation as a key *Third Way* to boost economic performance.

Recently, the Centre had joined forces with an unlikely bedfellow - the British Venture Capital Association - to present the Treasury with a bespoke joint share ownership plan, which would permit private equity owned companies to award Eso options. This was just one example of the Centre’s considerable lobbying activities, added Mr Hackworth.

Dividend bonanza for employee shareholders

Shareholders of UK listed companies, including many employee shareholders, are due to receive a record **£94bn** in dividend payments this year. Dividend payments rose to £28.5 bn in the three months to September, a record for the third quarter and were up by an average ***14 percent*** from last year. This was driven by bigger pay outs from mining companies, which accounted for two-thirds of the increase, said outsourcing group **Capita**’s Dividend Monitor, which reported the pre-tax numbers.

Most, though not all, employee shareholders receive dividend payments. The 135,000 **Royal Mail** employee shareholders have done well so far from dividend payments since privatisation in October 2013.

"Investors have struck gold as this year’s haul easily smashes the previous record set in 2014," said **Justin Cooper**, ceo of Centre member **Capita’s Shareholder Solutions**. "Generous payouts have been topped up by big exchange rate gains between January and June and very large special dividends, setting 2017 up to be a sparkling year," he said. The second quarter of this year saw record payments of £33.3 bn too, up from £29.1 bn from the same Q last year. However, companies have also come under fire for raising dividends when wage growth and productivity is sluggish.

EVENTS

Numbers swell for British Isles employee equity symposium

Book now for the Centre's British Isles employee equity symposium on **Thursday & Friday, November 16-17** and get a reduced price ticket. Centre member practitioners (service providers) can attend as delegates on both days for only **£373.50** plus VAT, a saving of 10% from the listed price - provided you book by noon **Wednesday November 8,** citing the code '**newspad**'.

At this the second symposium, hosted by Centre member **White & Case**, four executive remuneration experts will challenge received views on whether top pay is too high. **Professor Len Shackleton**, of the **Institute of Economic Affairs**; **Paul Jackson,** of **Reward & Development & Investors' Chronicle**; **Damian Carnell** of **Willis Towers Watson** and **Damien Knight** of **MM & K** will give delegates their views on the key question: - *Are UK executives really paid too much?* This controversial issue will dominate the programme in the White & Case auditorium at its UK HQ in Old Broad Street, EC2. During an initial panel session, led by Prof Shackleton, the experts will give their reactions to the government's recent proposals aimed at curbing executive reward levels. Some remuneration consultants suspect that dissatisfaction with UK executive reward levels has become an unstoppable train and that Prime Minister Theresa May's proposals won't alleviate public anger and disquiet. Damien Knight however will disclose why he thinks many of the government's executive reward ideas are based on mal-information. Paul Jackson, former global head of reward at HSBC Insurance, will call for a clearer definition of executive 'pay.' He will say that the value of a share award as at *the time of award* should be counted as pay.

Winding up the 'top pay' debate will be **Andrew Ninian**, head of stewardship & corporate governance at the **Investment Association,** whose 200 investment manager members collectively manage almost £7 trillion for clients worldwide.

This is an essential session for all involved in remuneration, where challenges can be expected from other invited guests.

Two presentations are lined up in the corporate governance and compliance sector: Data privacy in Eso plan administration, focusing on the application next year of the EU's General Data Protection Regulation, which will be tackled by **Nicholas Greenacre**, supported by **Tim Hickman** and **Helen Levendi** from **White & Case.** Then the problems of '*Staying compliant with MiFID II,'* will be explained by **Jennifer Rudman** of **Equiniti**.

Centre chairman, **Malcolm Hurlston** will welcome delegates and deliver the opening address: '*Share schemes – time for a reset?'* He will show a video from ex-Barbarian at the Gate KKR whose chief has become a leading advocate of shares for all employees. **Colin Mander** of KKR's **Gardner Denver** will take part in the day's proceedings. The Centre has been working hard with BVCA to gain traction for private equity with HMRC. KKR uses restricted stock units. Other speakers include: **Bill McGilivray** of **Jersey Finance; Louise Jenkins** of **FTI Consulting**; **William Franklin** of **Pett Franklin; Garry Karch** of **RM2, David Craddock** of **David Craddock Consulting Services**; **John Hunter** of the **UK Shareholders Association,** with **Mick McAteer** of the **European Commission Financial Services User Group.**

This event is co-sponsored by global lawyers **White & Case.** Channel Islands based trustees, **Estera Trust** and by **Intertrust** are symposium e-brochure logo co-sponsors.

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The rest of the programme covers:

*Are employee share schemes worth the effort? *What US Esop transactions can teach us in Europe; *Taxation of international employee equity schemes; *The road to the Roadchef motorway services Esop disaster; *Democratic rights for employee shareholders? *The Employee Ownership Trust - *how far can it go?* *Crown dependencies and Brexit - what's to fear and what's to learn?

The agenda can be downloaded from www.esopcentre.com/event/

Delegate prices:

Centre members: practitioner **£415;** trustee **£330;** plan issuer FREE

Non-members: practitioner **£625;** trustee **£500**; plan issuer **£75**.

All attendance fees are subject to standard VAT.

Claim 10% newspad reader discount when you book by November 8.

You can register a **delegate** by sending an email to: britishisles@esopcentre.com. The admission price includes a buffet lunch and a drinks reception. Thirty-seven registrations have been received to date. *The Centre thanks White & Case for hosting us.*

EVENT REPORT

Share schemes for Guernsey trustees report

Centre Chairman **Malcolm Hurlston** re-affirmed the link the between employee share scheme activity and the Channel Islands, when he opened this year's Guernsey share schemes for trustees seminar. This annual event, at the St Pierre Park Hotel, is held jointly with the **Society of Trust & Estate Practitioners (STEP).**

Mr Hurlston gave an overview of employee share ownership and summarised the history of collaboration between the Centre and the States of Guernsey Government, beginning with productive out-reach in the 1980s and culminating in Guernsey minister Gavin St Pier using the Centre 2015 Guernsey seminar to moot the possibility of replicating a UK style tax-advantaged employee share scheme.

Given the returns available to investors in Eso schemes, Mr Hurlston said he was surprised at the reticence of various British institutions on the subject. Notably, banks needed to "look again" at the prospect of lending to Employee Ownership Trusts, which should be recognised for the stability and prosperity they afforded to investors and participants. Westminster remained all too quiet about Eso: for example, ministers had failed to find ways to underscore the 'pull' motivations of Eso, rather than relying on tax relief provision. Additionally, the burden of inheritance tax levied on employee ownership trusts was identified as an area where corrective action was necessary. He pointed to the examples of Prime Ministers Margaret Thatcher and Gordon Brown putting pen to paper about Eso, to show that forward movement is more than possible. He ended on a positive note, suggesting that Theresa May, with her focus on the *Just About Managing*, could well champion this cause. With regard to Brexit, its current intangibility prevented useful analysis of its ramifications for employee share ownership schemes. He told delegates of the Centre's plan to launch an *Employee Shareowners Association*. He emphasised how the Centre actively promotes best practice, with the best employee share plans being celebrated at the World Centre for Employee Ownership Awards *(see front page story*). Finally, the Centre's dedication to the exploration of employee equity in all its forms was evident in the comprehensive and controversial agenda for its British Isles employee equity symposium in London on **November 16-17.**

Delegates were welcomed by **Andrea Dudley-Owen** who represented the **States of Guernsey**'s committee for economic development. Ms Dudley-Owen spoke of her government's commitment to fiduciary services. This commitment, she explained, was represented by her government's 'digital first' approach and its involvement in the first ever commercial deployment of block chain for private equity. She emphasised how her government was safeguarding Guernsey's financial industries in its negotiations with the British mainland, ahead of the country's exit from the EU. Andrea went on to suggest that share plan practitioners may benefit from the outcomes of a forthcoming skills gap strategy, which may include the future provision of skills training for those with fiduciary duties.

David Craddock, founder of his eponymous share scheme consultancy explored the available models of management buyout via Eso, which had evolved over time from the original principles set out by Louis Kelso in the 1950s. Delegates were guided through different models of Eso management buyouts, including a model optimal for businesses that are 'cash poor' but asset rich. David shared advice for those managing employee ownership trusts, noting that many overlook the fact, in the eyes of HMRC, such a trust would always "represent a *prevalent* market" regardless of actual trading potential. Looking ahead, Mr Craddock pointed to the emergence of a new hybrid model: if an employee ownership trust was not established to own the entirety of the issued share capital of a business, then room existed to incorporate a secondary share scheme in tandem. Share Incentive Plans (SIPs) could still be deployed by a business using an employee ownership trust.

Next **Pett Franklin's Charlotte Fleck** made her speaker debut, sharing the podium with **Zedra**'s **Elaine Graham.** The case was made for EOTs to benefit from offshore trustees if the scale warranted it, to bring expertise to bear, to avoid trustee conflict of interest and, very much thirdly for tax advantages. Ms Flack and Ms Graham noted that trustee conflict of interest was central to the emergence of the *Roadchef* scandal. Too often directors were ignorant of their trustee fiduciary duties (as outlined in section 170 of the 2006 Companies Act) and simply "nod things through" without querying the basics. However the appetite of offshore trustees for majority owned trusts was still being examined.

Juliet Halfhead and **Matthew Maltby** of **Deloittte** spoke next**.** Juliet warned the audience to be prepared for the 'change in net settlement practice,' due to come into force in January next year, as a result of accounting rule changes. From then on, such settlements wouldn't require cash accounting. She suggested that trustees consider recycling shares through their respective trusts to accrue the greatest benefit from this development. A pitfall identified in the presentation was the common failure to the ensure Stamp Duty was paid on the sale of shares *back* to trusts, with costly results. In considering stamp duty, delegates were advised to study the instructions in their exercise documentation and their benefit-in-kind liability. The team later highlighted remediation on inheritance tax and data security fortification as their sector's upward trends. Matthew recommended that trustees register the beneficial ownership of trust assets on HMRC's new consolidated registration service for trusts with UK tax liabilities.

Esop barrister **David Pett** of **Temple Tax Chambers** looked into the crystal ball. The crux of his proposal was that steps should be taken to induce more imaginative uses of SIPs. Delegates were given a step -by-step breakdown of a worked example whereby an employee's share investment of £250 (from tax-free earnings) could potentially produce a return of 1500 percent. Mr Pett then explained how the government could potentially frame the provision of Eso options for private equity employees through a bespoke '*Joint Share Ownership Plan,*' which had been presented to the Treasury with **British Venture Capital Association (BVCA)** as part of the Centre's lobbying. His talk concluded with the proposition that HMRC allow interest-relief on loans arranged solely for the purchase of shares in an employee-controlled company beyond the first year.

Haines Watts partner **Paul Malin** described changes in the methods used to tax, the methods used to minimise tax and attitudes towards those who take steps to minimise their tax burden. The nature of his work had shifted from minimising tax liabilities to wealth preservation. The activities of tax evasion and tax avoidance had been unfairly conflated by outside observers, he said. HMRC now used force of "personality" rather than legislative clout to compel citizens to produce documents. In addition to this, delegates were warned about a recent tone change in tone of HMRC communications. The taxman was now more likely to charge higher penalties for non-compliance and use '*name and shame'* tactics on offenders. Paul said that recent correspondence with HMRC had shown that it was more likely to raise political issues and inform citizens of its knowledge of a client holding certain assets which ***could*** be susceptible to taxation (without knowing whether such assets actually *were* taxable). In Paul's words this was indicative of HMRC's modus operandi - "logical no... sense maybe".

Graham Muir of **CMS Legal Service** gave the inside track on the legal dispute between HMRC and Rangers Football Club (*see separate story below on disguised remuneration).* In this now notorious case, Mr Muir explained how the Supreme Court had ruled in HMRC's favour in its assessment of the employee benefit trust put in place by the club. Allegedly, more than ***£45m*** was paid in tax-free loan to managers, players and directors during nine years. Graham attributed Rangers' downfall to its inability to comply with a redirection of earnings principle. Touching on subsequent cases affected by the ruling, the presentation's key lesson for practitioners of EBTs was that the relevant parties must constantly be aware that "the primary tax liabilities fall on the sponsoring company". The question posed to delegates, perhaps rhetorically, was whether liability settlements were ever a "good use of trust funds"

Alison MacKrill from **Appleby Global** and **STEP** cited cases that influence the business-as-usual activities of trustees. The *Whittaker v Concept Fiduciaries Ltd and anor (2017)* had refined what constituted a genuine 'causative' trustee mistake, using English law. Elsewhere, in the case of *Dawson-Damer v Taylor Wessing (2017),* plaintiffs successfully used the unorthodox method of making a 'subject access request' under a UK data protection law to acquire information from the UK solicitors about the Bahamian trustees they were suing. Here, Ms. MacKrill identified a prescient link to the much-discussed General Data Protection Regulation which may make it more difficult to export personal data outside the EU from May 2018. Ms MacKrill made predictions on how the Markets in Financial Instruments Directive (MiFID2) could affect Centre members.

MOVERS & SHAKERS

Centre member **Volaw Group** has rebranded itself as **VG.** Mark Hucker, md, of VG, said: "We are very proud of our 35 years of accumulated knowledge and expertise as Volaw, which we try to apply for clients' benefit every day. We jealously guard our independence, because as valued partners, clients tell us it produces the best solutions and that will not change. However, we are starting on a new stage of our journey with ambitious goals to delight clients, to attract and retain the very best staff and to build on our valued relationships. As for the differences, the most immediate and obvious are visible in our website, brochures and communications." VG had tried to make these simpler, using plainer language and to focus them on client needs. It intended to respect the group's heritage while embracing change, to carry forward the best parts of **Volaw,** while looking ahead to the next 35 years! Contact: **mhucker@vg.je**

David Craddock's new Tolley

Tolley's has published the second edition of its Guide to Employee Share Schemes, which is written by Centre member David Craddock. So much has changed since the first edition in 2009 that 11 new chapters have been added to cover developments over the intervening years. Added too is much new empirical evidence on the benefits of share schemes. The book is clearly laid out, drawing on practice and enthusiasm as well as all the essential technical detail. Without doubt it is an essential volume for all interested in share schemes. The Centre is planning to make courses available covering the topics. Available from www.lexisnexis.co.uk at £129.95

Pete Stavros of **KKR** told Centre chairman Malcolm Hurlston how he helped **Gardner Denver** distribute substantial equity to the employees recently. **"**We set aside a pool of options for all of the employees excluding senior management (they made direct investments in the company, and had separate option grants). At the IPO, we converted this pool of options into restricted stock and awarded it to the employees. The stock was fully vested at the IPO but there were transfer restrictions which lapsed 50 percent in one year and 50 percent in two years (from the date of the IPO). The initial aggregate value of the grant was $110m but at today's stock price that amount has increased to nearly $150m. We awarded the stock as a percentage of an individual's annual compensation (it ended up being about 40 percent but at today's price it is closer to ***55 percent),"*** said Mr Stavros.

UK CORNER

Companies risk loss of tax reliefs over registration errors

Share plan sponsor companies and their advisers are risking fines by HMRC and the possible loss of all tax advantages as a result of having incorrectly filed details online of recent employee share scheme awards and grants.

HMRC announced in its latest *Employee Related Securities (ERS) Bulletin* that details of many new share scheme registrations on ERS's online service are incorrectly entered.

Newspad has already reported extensively on the online service IT teething problems which resulted in the loss of an entire year's official share scheme statistics (2014-5).

Although lengthy IT repairs have restored the online share scheme registration service, this time it has been human failures at the heart of fresh problems.

In some cases, junior HR staff entered share scheme awards in the wrong online boxes, not knowing – for example – that the Company Share Option Plan (CSOP) **is** a tax-approved employee share plan. In others, HR departments of acquirer companies have not been sufficiently briefed about the employee share schemes in companies they have taken over recently, resulting in botched entries.

"HMRC continues to find that many new registrations on the ERS online service are showing an incorrect scheme type. In particular, the scheme type Company Share Option Plan (CSOP) has been incorrectly selected for non-tax advantaged schemes and arrangements.

"In some cases other tax advantaged scheme types such as Schedule 2 Share Incentive Plans (SIP) have been registered under this category. When registering an employee share scheme or arrangement for the first time, companies should consider the guidance -'*How to identify your scheme type*' - before selecting the appropriate scheme type.

"Errors were found in the rules or other scheme documents in more than one newly registered CSOP or SAYE scheme. These errors are generally considered to be less serious and can be corrected by an amendment to the scheme rules. If corrections are made within the statutory time limit, the scheme retains its tax advantages."

HMRC added: "We encourage companies and their agents to eliminate these errors from their documents. This will reduce the need for compliance interventions and minimise the possibility of statutory penalties for the scheme organiser."

Plan sponsors and/or their advisers can be fined up to £5000 for incorrect filings, leading to disqualification and loss of all tax and NICs reliefs.

The requirement to register a plan online and file online returns was introduced more than three years ago, but plans are still being registered in the wrong category. All non tax advantaged plans should be registered as an '*other*' type of plan.

Any incorrect registrations must be terminated, as they cannot be changed once on HMRC's system. An annual return will need to be filed for the tax year in which the final event date (as notified to HMRC) occurs. This applies even if an incorrect registration is terminated - *a nil return must be filed*. Each tax advantaged plan in the UK needs a *separate registration*. A registration for a non tax advantaged type of plan can cover multiple plans and arrangements. Only one registration for each plan is required per group. The company making the registration submits the annual return on time and tells HMRC which other companies are covered by the return. The registration deadline is usually July 6 after the year in which the first award was granted. It is best to register plans well in advance of the deadline, to avoid the worst.

The most common Eso problem arising from takeovers is that the acquirer is not told about all the share plan registrations held by the acquired company. In a few cases, this problem is aggravated by 'relationship difficulties' arising from the takeover. Annual returns for those registrations are not filed on time and the acquirer ends up with a late filing penalty. Alternatively, upon handover or change in personnel, the access details for HMRC's system may be lost, making it difficult to gain access to HMRC's online system.

EU plans crackdown on Eso 'tax dodge' awards

The EU plans to crackdown on global corporations, mostly based in the US, who are increasingly using tax structures such as mass employee share awards in order to reduce their Corporation Tax (CT) bills.

Companies are either re-routing revenue through countries with lower corporation tax rates or giving almost all their employees major additional tax-advantaged share or share option awards- on which the company itself can then claim tax relief, said *Accountancy Age*. In some cases, companies apparently suffering 'losses' in parts of their business may have their profits almost completely wiped out for tax purposes – at least on paper - the article said.

The EU has begun taking action against such behaviour and this has resulted in corporate giants such as **Amazon** and **Apple** being ordered to pay back taxes to the relevant EU member states. HMRC too is becoming increasingly active in questioning the use of high equity awards to reduce corporate tax bills.

Accountancy Age cited **Airbnb,** which paid only £188,000 CT in the UK last year, despite generating £657m in rental payments for property owners. This was even £8,000 *less* than the tax it paid in 2015. "Airbnb has two UK subsidiaries, but commissions earned by the company are booked through its Irish subsidiary. While one of its UK subsidiaries made a pre-tax profit, the other did not pay corporation tax due to deductions that reduced profits," said the magazine. "Airbnb Payments UK, which deals with payments between landlords and customers for countries other than the US, China and India, made a pre-tax profit of £960,000 and paid £188,000 in UK corporation tax. The other UK branch, Airbnb UK, which handles website and app marketing, earned £463,000 in pre-tax profits but did not pay corporation tax, *due to the issue of tax-deductible shares to staff that resulted in a loss."* Airbnb said that it was doing nothing illegal: "We follow the rules and pay all the tax we owe. Our UK office provides marketing services and pays all applicable taxes, including VAT. The Airbnb model is unique and boosted the UK economy by £3.46bn last year alone."

Accountancy Age has **Facebook** in its line of fire too. "Facebook paid £5.1m in corporation tax in the UK last year, despite profit and revenues skyrocketing. Revenues quadrupled from £210m in 2015 to £842m last year, and pre-tax profits were £58m, up by around £6m." However, Facebook paid only £1m more in CT than it did in 2015 - mainly because it too used employee share awards to reduce its overall corporate tax bill by £6m.

Facebook's decision to use tax benefits associated with employee share plans could cause problems with HMRC, according to a tax lawyer at one of the UK's biggest law firms. He said: "It would certainly be fair to say that the share payments contributed to Facebook's low tax payments. Across the corporate sector we have seen HMRC challenging companies' rights to this relief."

Facebook attributed the dramatic rise in revenue to the "commencement of advertising re-seller services" by its UK services in April 2016, which brought in large numbers of UK customers, according to the *Guardian*. The tech giant made the move following criticisms of its controversial tax practices that saw the company routing advertising sales through Ireland to pay a lower Corporation Tax rate.

Facebook invested heavily in the UK last year, with staff numbers rising from 682 to 960. Wage and bonus costs rose to £182m, meaning the average employee was paid £190,000. It said it planned to hire another 500 people soon.

AIM listed **Inspired Energy**, a leading UK energy procurement consultant to UK and Irish corporates and SMEs, launched an SAYE share scheme, which attracted a healthy **48 percent** participation rate among eligible employees. They were invited to subscribe for options over ords with an exercise price of 14.60 pence per ord, representing a 20 percent discount to the closing mid-market price of the ords on October 20. The options have a savings contract start date of December 1 and are exercisable between December 1 2020 and May 31 2021. Out of 204 eligible employees, 99 elected to participate in the SAYE scheme and accordingly, a grant of 4,927,512 options was made on October 23, equating to 0.87

percent of the total issued share capital. As this is a HMRC approved scheme, eligible employees included all UK based employees who have been employed by the group for six months or more.

Disguised remuneration

Following the unanimous decision of the Supreme Court in the Rangers Football case, HMRC published a *Spotlight* focussing on similar disguised remuneration schemes, said Centre member **Linklaters** in its latest issue of *Tax News*. Spotlight corroborated an earlier story in *Newspad* that HMRC intends to use the decision to take action against many of the disguised remuneration schemes using the full range of available tools. ***This will include considering, in appropriate cases, whether to issue follower notices and, if relevant, associated accelerated payment notices (APNs).***

"HMRC's view is that the principle set out by the Court - that employment income paid from an employer to a third party is still taxable as employment income applies to a wide range of disguised remuneration tax avoidance schemes, no matter what type of third party is used," said Linklaters. According to HMRC, this includes:

- Employee Benefit Trusts (EBTs) - including variants within these schemes where no loans are made from the EBT, but instead the funds remain in, or are invested by, the trust
- Disguised remuneration routed through employer-funded retirement benefit trusts;
- A range of contractor loans schemes.
- "However, HMRC does acknowledge that the facts of each case will determine at what point earnings arise."

Remuneration schemes involving EBTs have become more common over the last 20 years, often as a way of seeking to remunerate key employees without making PAYE or national insurance contributions. Insolvency practitioners are advised to investigate such schemes to see whether funds can be clawed back for the benefit of creditors, said Ollie Ward-Jones of *Squire Patton Boggs* – "In addition to avoiding PAYE and NIC contributions, the operators of such schemes may have sought to obtain a Corporation Tax deduction, as if the amounts were earnings at the time they are allocated. Although many of these schemes did not breach legislation at that time, HMRC has regarded them as aggressive tax avoidance and has taken the *view that when funds were allocated to the employee or family member, those funds became earnings on which PAYE and NICs were due and for which the employer should have accounted."*

HMRC introduced legislation leading to the Finance Act 2011, which included provisions specifically targeting EBT schemes, ensuring that these schemes were not effective after that date. EBT schemes put in place prior to that were not affected by the legislation and HMRC pursued those on separate legal grounds, with mixed success. It subsequently announced settlement opportunities for employers who had already used EBT schemes and the government was enacting further legislation to tackle them in the Finance Bill 2017. "The Rangers scheme was a fairly extreme use of EBT tax planning, which is perhaps why HMRC used this as a test case. The Supreme Court handed down its judgment, which held that payments made under the scheme operated by Rangers were subject to PAYE and NICs, albeit through a new line of argument. There are potentially two claims open to insolvency practitioners against the directors of companies that adopted EBT schemes – for misfeasance under Section 212 of the Insolvency Act 1986 and for transactions defrauding creditors under Section 423," he added.

High performance pay

Executives may not get a big rise next year, according to the consulting firm and Centre member **Aon Hewitt**. Its survey found that businesses plan to keep their raise budgets fairly flat next year, while shifting increased amounts of it toward performance-based pay — meaning only top performers would see significantly bigger pay packets. Companies plan to allot an average 12.5 percent of payroll toward incentive and bonus pay in 2018, but employees will need to work even harder if they want a piece of the pie: 15 percent of those firms that plan to change their pay structure said they will set more competitive targets. Companies are focused on retaining top workers, as low unemployment rates increase competition for talent.

COMPANIES

*Missing out on Champions League football this season cost **Arsenal** around £50m, yet the club's ceo Ivan Gazidis has still been awarded a near £1m bonus. Arsenal's financial report for 2016-17 shows Gazidis receiving a package of £2.6m, including a £919,000 bonus which consolidated his position in the top three best-paid club administrators in the Premier League. His salary is similar to the previous year's, although Arsenal suffered the serious setback of not playing in Europe's premier club competition for the first time in 20 years and no major commercial deals were signed by the club.

*Senior executives at Britain's biggest tech company are in line for a payday of almost £270m in a Silicon Valley-style bonanza. Just weeks after finishing its £6.5bn takeover of Hewlett Packard Enterprise's (HPE) software business, **Micro Focus** said it would award executives and managers the bonus if its share price rose to £34 in the next two years. That would require the shares to gain another 40 percent in value by September 2019, after closing one percent, or 23p, higher at £24.36 recently. Critics branded the deal – potentially one of the biggest in UK corporate history – 'extraordinary'. It comes amid mounting concern over *fat cat* pay in UK boardrooms. Under this deal, five executives alone would be handed 3.7m shares if the share price hits £34. The highest paid would be Kevin Loosemore, the company's executive chairman since 2011, who stands to gain £37.4m. The 58-year-old Oxford University graduate, who received £8.4m a year in pay and bonuses over the past two years, already held shares worth £17m at the end of September. Chris Hsu, 47, Micro Focus's new ceo, who was previously executive vice-president at HPE Software, would take the next biggest slice at £30.6m. Others set to cash in include finance chief Mike Phillips, 54, who would receive £23m while coo Stephen Murdoch, 50, and board member Nils Brauckmann, 53, would both pocket £17m each. A further 4.2m shares, worth £142.8m if the price hits £34, would be awarded to 30 other senior employees. Stefan Stern, a spokesman for the left-leaning **High Pay Centre**, said the proposed payout raised questions about whether the right people were being rewarded. He said: 'They are simply extraordinary numbers. There is nothing wrong with performance incentives for people who create value, but I suspect those people – probably programmers and IT specialists – are not the people who will benefit from this. Most people could not begin to understand how you reach numbers like these for three years' work – they are beyond the lottery.' The windfall would be granted only if the share price hits £34. If it fails to pass £27, they get nothing.

A Micro Focus spokesman insisted the payout was conditional on 'delivering exceptional shareholder returns'. After learning about the *El Dorado* bonus scheme, some Micro Focus IT employees complained publicly that thousands of colleagues in the company had seen their bonuses cut – some substantially - this year. Before its takeover of HPE, Micro Focus was worth about £4.45bn, and that has risen to around £10.5bn. The spokesman added: "*Micro Focus has developed a very clear strategy, linked to a financial plan and to a rewards system that only pays executives when shareholders see returns. Remuneration policies align executive incentives to long-term shareholder interests. The HPE transaction represents the next stage in Micro Focus's track record of delivering exceptional shareholder returns*."

Edwin Morgan, director of policy at the **Institute of Directors**, said: "The key test of whether directors' pay is justifiable is the judgment of shareholders."

Announcements under the MAR and Disclosure, Guidance & Transparency Rules

*AIM listed **Deltex Medical Group**, the global leader in Oesophageal Doppler monitoring announced the grant of share options to its executive directors under its employee share option scheme and the exercise by an employee of 97,560 share options under the company's Enterprise Management Incentive scheme (EMI). The Board had approved the grant of 2,500,000 and 1,562,500 share options to Ewan Phillips and Jonathan Shaw under the company's 2011 executive share option scheme. The exercise price is four pence per share option, a premium of 23 percent over the closing price on September 22. These share options may be exercised between September 2020 and September 2027, subject to relevant performance conditions, based on compound annual sales growth. Following the grant of EMI options, Mr Phillips had more than nine million options in the company and Mr Shaw almost two million. In addition, Mr Phillips and Mr Shaw own 2,921,051 and 262,931 ords in the company respectively. The number of ords now in issue is 313m. The Company does not hold any shares in treasury.

***Diageo** announced that it had purchased 280,830 ords on the LSE and regulated Multilateral Trading Facilities from Morgan Stanley & Co. The purchased shares will be held in treasury for the purpose of satisfying options grants and share awards made under Diageo's employee share plans. The weighted average price paid per share was 2,567p. Diageo intends to keep those purchased shares in treasury. Diageo announced too that on October 19, it had purchased 372,253 ords from Morgan Stanley & Co at a weighted average price paid per share: 2,569p under its share buy-back provisions. This followed instructions issued by Diageo in September. Following the employee and buy-back purchases: the number of shares purchased to be held in Treasury for the purpose of satisfying options grants and share awards made under the Diageo's employee share plans is 562,419 from July 1 2017 to today's date. Diageo now holds 235,169,065 ords as treasury shares. The total number of Diageo ords in issue (excluding shares held as treasury shares) is 2.5bn.

***HSBC Holdings** was advised that its Latin America ceo Paulo Maia acquired 111 ords of US$0.50 at £7.32 per share and sold 42 Shares at £7.44 per share on October 3 under the HSBC International Employee Share Purchase Plan.

*On September 28 the **Maintel Holdings** HMRC approved Share Incentive Plan (SIP) acquired 714 ords of 1p each in the capital of the company, representing 0.005 per cent of Maintel's issued share capital, at a price of 785p per share. In accordance with requirements of the EU Market Abuse Regulation, further detail of the shares purchased by PDMRs R Grig, S Legg and K Stevens respectively (whose shares are held by the SIP trustees) were given. The Company notes that E Buxton, N J Taylor and W D Todd, being PDMRs, are the SIP trustees, although they are not beneficiaries of this transaction. Grigg and Stevens bought 19 shares each and Legg bought 20.

***Jardine Lloyd Thompson Group** was notified on October 13 that the trustees of the company's All Employee Share Plan (SIP) allocated either ten or 11 shares of £0.05 to each of five directors. These Shares were acquired by the plan trustees by market purchase at a price of £12.80 per share. The Trustees purchased 5,698 JLT shares in the market at £12.80 per share on the same date, for directors and employees in the Jardine Lloyd Thompson Group, including UK subsidiary companies

***Nokia** is to issue around almost three million new free shares to be later used to meet the firm's obligations mainly under Nokia's Employee Share Purchase Plan (ESPP) 2016, for which the savings period ended on June 30, 2017. Nokia will provide one matching share for every two shares bought under the plan which the participant still held on July 31. The equities under the 2016 ESPP will be delivered to the eligible staff on or around October 30, this year. These equities are issued free of charge. Nokia Board approved the release of the 2016 ESPP as part of the Nokia Equity Plan on February 10 2016 to promote employee share ownership, engagement and commitment. The market cap of firm is around $35 bn.

***STV** granted options on October 3 over 154,332 ords of 50p each in STV Group. The options were granted to participating employees under the rules of the STV Group plc Sharesave Scheme, an HMRC approved scheme introduced to encourage wider employee share ownership of the company, said STV. The options are exercisable at a price of £3.49 per ord, representing a discount of ten percent to the market value of STV's shares on the dealing day immediately prior to the date of invitation. They are exercisable from November 1 2020 in accordance with the rules of the scheme. The grant of options amounted to 0.39 percent of the company's existing issued share capital. 5,157 of the options were granted to cfo George Watt.

WORLD NEWSPAD

France: Media conglomerate **Vivendi** prevented an employee share awards scheme going ahead at **Ubisoft**, where it is the biggest shareholder, as it presses to get board representation at the French video games firm, the maker of games such as *Assassin's Creed* and *Just Dance*. Vivendi, which has built up a 26.6 percent stake in Ubisoft since 2015, said that it had abstained from voting on several resolutions at the agm, including a motion to grant bonus shares to employees. The resolution, which Ubisoft's top executives said was aimed at attracting and keeping talent, needed two thirds of the vote to pass. But Vivendi, led by serial corporate raider Vincent Bollore, has long been at odds with Ubisoft's founding Guillemot family, which holds 15 percent of the shares and which is opposed to Bollore increasing his influence at the firm. Without board representation Vivendi said it was impossible to approve the resolutions submitted for voting. "Vivendi regrets that, in defiance of all logical corporate governance, it has not yet been invited to be a member of the board of directors, even though it is the largest shareholder," the company said in a statement. "It is clear that this complete lack of transparency from the family shareholders is depriving the company of significant support in its development and of proven expertise in the fields of media and entertainment," it added. Video games are a key growth area for Vivendi. Stéphane Roussel, its coo, told *Le Figaro* newspaper last June: "There are two possibilities - either Ubisoft's management accepts to sit around a table and we proceed in a friendly way, or we turn elsewhere with another target of more than €1bn, which may imply an exit from Ubisoft." The Guillemot brothers have been increasing their ownership of Ubisoft to fend off Vivendi's advances. On November 20, Vivendi could automatically receive double voting rights in Ubisoft as a result of France's *Florange Law, under which companies that have held their shares in registered form for at least two years are granted double voting rights.* This could push Vivendi over the 30 percent threshold for a mandatory takeover of Ubisoft.

Australia: A leading Queensland corporate lawyer said generous bonuses and incentives may foster wrongdoing in the business community. Ken MacDonald said many executives were pressured into meeting performance targets "by hook or by crook". He was critical of hedge funds that used "aggressive tactics" to secure short-term profit. Mr MacDonald was speaking after accepting Queensland's 2017 Australian Institute of Company Directors gold medal. "The idea that good people will do better if offered a substantial bonus to achieve a particular set of indicators is one I find increasingly difficult to accept," he said. "When faced with the prospect of a big reward to achieve several measures, some people will drop the ball on other matters of perhaps equal or even greater importance in the longer term. But we know that it dilutes and defeats the purpose of an incentive if there are too many KPIs (key performance indicators). More importantly I find it very easy to accept that those who prove to be of lesser character will be tempted by the size of the prize to meet their performance measures by hook or by crook. Claw-back mechanisms may satisfy a desire for fairness or even revenge, but I believe it is hard to argue they can often act as a deterrent in advance to curb improper behaviour. I am well aware that what might be desirable in principle is not always easy to achieve in practice." Mr MacDonald was a long-term partner with Allens law firm and served as a director of a dozen leading firms, including miner MIM Holdings. He saved some of his toughest comments for hedge funds. "Aggressive short-selling has always been with us to some extent, but not I believe to anything like the same extent as we are seeing now," he said "Scrip lending, sometimes just for the purpose of buying a vote, and whether or not accompanied by short-selling, is another practice becoming common which calls into question the fundamental issue of whether directors should always consider the interests of all shareholders and if so, whether to the same extent. I note that in many circumstances these sorts of tactics seem to go close to constituting illegal market manipulation but for whatever reason we see little evidence of their being attacked along these lines.

Germany: Deutsche Boerse said it was capping the annual pay packages of its board members at ***€9.5m each***, from this year, as it tries to move on from a long insider trading crisis. The cap affects all aspects of remuneration - fixed pay, bonuses and pensions. The decision was made at a meeting of the German exchange operator's supervisory board. Chairman Joachim Faber said the plan was aimed at "preventing possible and unwanted extremes", while at the same time remaining competitive. Investors have complained about excessive pay at Deutsche Boerse while shareholders are left footing the bill for a €10.5m settlement over allegations of insider trading. Shareholders are angry too about a failed merger attempt with **London Stock Exchange**, which cost them millions of euros in M&A advisory fees.

UAE: Awad Capital, the **Dubai Financial Services Authority (DFSA)** regulated firm specialising in M&A, corporate finance and capital markets advisory, announced the creation of an employee share ownership programme (Esop) that allows senior employees and members of the board and advisory board to become shareholders in the firm.

USA: What happens to the ceo of a major corporation which suffered what could prove to be the most extreme data breach in history? At credit report agency **Equifax,** ceo Richard Smith will leave the company with a $7.6m bonus. Equifax confirmed that Smith can collect his huge bonus as soon as early next year. More than $5bn in shareholder value was wiped out in the aftermath of the data leak. But the executive had been granted a 73,392-share bonus that can be redeemed early next year as part of a long-term incentive programme that was set up nearly a decade ago. This does pale in comparison to the $52m in stock and other retirement benefits he accrued during his career at Equifax. If Smith is found to be personally responsible for the data breach then his financial responsibility will be minor. *However, Smith could receive another $11m in stock bonuses at the end of 2018.* Equifax revealed that even more Americans than previously thought may have had information compromised in the cyber security breach. *It accepts that about 700,000 British citizens too may have had personal data compromised*. Equifax thinks that 145.5m of its US customers might have been affected. It identified an intrusion on July 29 and Smith said he learned about the problem two days later. An investigation ordered by the company revealed the enormity of the attack by mid-August. He said Equifax faced a massive task responding to customers. The firm was overwhelmed by calls after the breach became public and faced problems with the website it created to address customer complaints. Equifax holds data on more than 820m consumers as well as on 91m businesses.

Hong Kong: The Financial Institutions (Resolution) Ordinance (**FIRO**) and the Financial institutions (Resolution) - Protected Arrangements- Regulation came into force in July, reported Pattie Walsh and Stephanie Wong of Centre member **Bird & Bird** Under FIRO, the Monetary Authority, the Insurance Authority and the Securities and Futures Commission are given powers to resolve Hong Kong based financial institutions (**FI**) which have gone bust. To align with international standards and practices, Part 8 of the FIRO sets out claw-back provisions which enable resolution authorities to make applications to the court to claw-back received and deferred fixed and variable remuneration from company officers - a director or shadow director; the ceo or deputy ceo, or another person employed by the FI. The provisions regarding remuneration claw-back are not yet in force, but they should come into operation after the Chief Justice has made rules regulating the Court's practice and procedure in connection with applications made.

Ireland: Key staff with share options in Irish tech start-ups and other SMEs will pay less tax on these, and delay paying the bill, under a new scheme which is the centrepiece of the Government's Budget pitch to the enterprise sector, reported *The Irish Times*. Minister for Finance Paschal Donohoe announced the Key Employee Engagement Programme (Keep), which he said would "support SMEs in their efforts to attract and retain key employees in a competitive international labour market, by providing for an advantageous tax treatment on share options". Under Keep, the tax will fall to the capital gains tax rate of 33 percent. It will only become payable when the shares are sold and the gain realised. This means staff can pay the tax bill out of the proceeds of the share sale, instead of being hit with the bill upfront as soon as the shares are put into their name. The gain attracts marginal income tax rates, which can be more than 50 percent. The scheme will apply to share options granted between January 1 2018 and December 31 2023. Only six percent of Irish employees are shareholders, compared to an average of almost 22 percent throughout the EU. The discrepancy stems from the steep tax burden of the current Irish share options regime.

Japan: A growing number of Japanese firms are rethinking how they compensate their top executives. In addition to the usual focus on financial performance, companies are keen to look at other factors that investors care about, such as environmental and social responsibility. Social criteria are a company's relationships with employees, suppliers, customers and communities. Earlier this year, Kyoto-based **Omron**, a pioneer in electronic ticket gates and automated teller machines, introduced a compensation programme that takes into account executives' efforts toward ESG and reflects them in their salaries. The company will ask a third party to review the leadership team's performance after three years, the end of the current mid-term management plan that runs through March 2021, and determine compensation accordingly. *Alongside sales, earnings per share and return on equity, social responsibility will be factored into executives' performance-based compensation, which could increase their total package by as much as 200 percent, depending on performance*. Omron, which makes everything from face recognition systems for digital cameras to blood-pressure meters, lists 'sustainable corporate value growth' as a key goal. The third party will calculate just how much Omron's corporate value is enhanced, and compensate the whole team accordingly. Cosmetics company **Shiseido** looks at peers in the industry to determine benchmarks for business results when deciding how much to pay executives. If Shiseido's operating profit grows more slowly than that of its competitors, the upper limit on the number of stock options for which executives are eligible will be lower. If the results are better than those of peers, more stock options could be on the table. Shiseido's rare disclosure of the names of rival companies that it compares itself to, such as L'Oreal, is part of efforts to be a globally competitive brand. "We have to compete with leading global players, including for recruits," said a company representative. "We wanted to make it clear to investors that we do not determine compensation just by internal measurements."

Luxembourg: During the presentation of the 2018 budget, a pending reform of the tax regime applying to stock-options was announced, the aim of which would be to align the tax rate to half the global rate of income tax, as is currently the case for capital gains. A draft law about this planned change in the taxation of stock options will be published later.

Kenya: National carrier **Kenya Airways** reinstated its Esop scheme that had been suspended and dormant for years, leaving the staff unable to access almost two million shares. The announcement was made after the company's 41st agm, held on September 22. The meeting had "to approve the establishment of the Kenya Airways 2017 Group Employee Share Ownership Scheme and the terms of the trust deed and the rules thereof." The group's Esop was set up during the initial privatisation in 1996. Kenya Airways has in recent years been hit by labour disputes that have eroded the trust between shareholders and workers, including pilots.

Singapore: Just 11 percent of 541 surveyed Singaporean firms gave their ceos long-term incentives, a survey found, highlighting a "significant misalignment" between executive compensation and performance. Of these, almost 70 percent were large firms, 19 percent were medium-sized and 5.2 percent small. ***Almost one third*** (31 percent) of Singaporean firms did not pay their ceos any bonuses in the 2016 fiscal year, but 21 percent paid them *despite incurring losses*. Of this latter group, about a third gave out higher amounts in 2016 than in 2015, *The Straits Times* reported. Median total pay for ceos remained at $625,000 for the 2016 financial year, hardly changed from the previous year. HR consultancy firm Korn Ferry Hay Group conducted the survey among SG companies in nine sectors that filed annual reports between May 2016 and April 2017. "Remuneration committees need to address the enhanced scrutiny from corporate governance activists, with added emphasis on pay-for-performance and ultimately sustainable performance in the long term," said Kevin Goh, a senior client partner at Korn Ferry Hay. KFH then compared its findings with its study of ceo pay at 300 of the largest US companies. In contrast, US ceo pay increased 4.2 percent to $16.8m in the 2016 financial year. Significantly, the increase was "almost entirely owing to a 4.4 percent rise in what is called the grant-date fair value of long-term incentives…base salaries grew only 0.8 percent." The long-term incentives at US firms "were by far the largest component of ceos' pay, representing 66 percent of their total direct compensation," according to *The Straits Times*. Having a long-term incentive plan emphasises the point that "top executives need to balance both the short and long-term sustainability of the company," Goh said.

South Africa: Katishi Masemola, general secretary of the Food and Allied Workers' Union, is hoping his members will bag an 18 percent stake in **Coca-Cola Beverage South Africa** (CCBSA), the largest Coca-Cola bottler in SA. The stake, which would be worth several hundred million rand, would have to be vendor-financed. Masemola told the Competition Tribunal in Pretoria that employees of CCBSA should get this stake as part of the employee share ownership programme that is to be set up in terms of the conditions attached to approval of The Coca-Cola Company's (TCCC's) acquisition of Anheuser Busch Inbev's (formerly SABMiller's) 57 percent stake in CCBSA, which was established in 2016, following a drawn-out merger process initiated in 2014. Its bottling operations cover much of Southern Africa. The tribunal conditionally approved the $3.4bn transaction, which was prompted by Anheuser Busch Inbev's acquisition of SABMiller in October 2016. The deal increases TCCC's holding in CCBA, which is the 10th-largest Coca-Cola bottler in the world, from 11 to 68 percent. The Gutsche Family Investments, a private entity, holds the remaining 32 percent. Masemola told Business Day that while the merging parties agreed to employees being allocated shares, "they couldn't agree to the quantum". The Gutsche Family and TCCC indicated that could only be determined once they had decided who their black economic empowerment partner would be. CCBSA, which had previously committed to a 20 percent black economic empowerment equity stake, said the 30 percent holding would include "an appropriate level of worker/employee ownership". The Eso programme stake had to be independent of the black economic empowerment holding, Masemola said. Anything less than ten percent would be unacceptable to employees. Masemola hoped that the benefits to employees would be better than those offered by South African Breweries' Zanzele scheme. About "75 percent of dividends were used to repay the debt and only 25 percent went to share scheme participants," he said.

Germany: Volkswagen and **Siemens** are two of Germany's most important industrial companies. Both have suffered scandals in the past decade. But in at least one key respect they're now poles apart. If you asked an ordinary VW employee what the carmaker's share price is, many couldn't answer, but there's a strong chance a Siemens employee knows more about the company. Having introduced a new employee share-matching plan in 2008, the number of participating Siemens workers has increased by about 80 percent. Almost half of its staff own a combined three percent of the stock. VW's last employee share plan was shut more than a decade ago. While ordinary workers get a yearly bonus (typically a few thousand pounds) linked to company performance, it's paid in cash. About ten percent of Volkswagen's core German staff still own shares, estimates Gerd Kuhlmeyer, who heads a staff investor group. "Owning shares can help to increase an employee's identification with the company," he says. VW could benefit from a bit more of what Siemens ceo Joe Kaeser calls "ownership culture". While VW employees are no doubt committed to their company's success, that's not always the same thing as creating value for its owners. Over the years, the car giant has made jobs a priority (625,000 at last count) and spent vast sums on research and development and new factories. Employees and the state of Lower Saxony, who between them hold half of VW's supervisory board seats and a 20 percent voting stake, went along with that spending even though it made the company bloated and inefficient. With a $25 bn diesel scandal bill to pay and amid broader fears about electric cars and ride-sharing, VW shares trade on a pitiful six times estimated earnings. By contrast, the Siemens stock price touched a record high this year, as Kaeser pressed ahead with overhauling the portfolio, including a healthcare spin-off.

VW has overhauled its pay for top bosses to include a share-based component, saying it was "more capital market orientated". Perhaps if employees had a bigger stake, they'd be more receptive to ideas that might re-rate the shares. There would be broader benefits too. Share ownership is woefully inadequate in Germany: *only about 14 percent of the population hold shares.* Since the dotcom bubble burst most Germans have had an ingrained suspicion of market "speculation". Policy has reflected this. But with interest rates dropping towards zero, Germans' preferred method of saving–bank deposits and life insurance–don't offer much return. This risk aversion is cementing the wealth gap between people with financial assets and those without. Company share plans can help staff get comfortable with investing. With more than 270,000 employees in Germany, VW's commitment would make a big difference. Daimler and BMW already do this. Meanwhile, giving VW workers new shares wouldn't be easy because of its complicated share structure.

USA: Wells Fargo ceo Tim Sloan told the US Senate that the bank had undergone a dramatic transformation in sales practices and customer service in the year since its bogus-account scandal became public. Company executives acted too late to address problems that resulted in 3.5 million fake accounts being opened without customers' consent, Sloan said in testimony to a Senate Banking Committee hearing. He apologised for letting customers and employees down and outlined the steps the bank is taking to fix the problems that led to the scandal, according to *Bloomberg*. The San Francisco-based bank had changed its target based incentive sales practices, established an office for investigating customer complaints and holding senior executives accountable by implementing a new compensation structure, Sloan said. Wells Fargo had re-hired more than 1,780 employees who left the bank during the years the alleged false accounts were opened. *The company had eliminated $180m in senior executive compensation, and not one member of the operating committee who was serving before September 2016 received a bonus last year,* Sloan said. Top executives in the community banking division where the fraud occurred were sacked and their bonuses weren't paid, he said. Wells Fargo is paying $11m for refunds and compensation tied to the account openings, $80m for the unwanted car insurance, $185m for fines and $142m to settle a class-action suit. More than 40 percent of that had already been clawed back from various executives. The US Department of Justice launched an investigation; New York's attorney-general has requested details about forced client car insurance accounts. Since the financial crisis America's regulators have proved adept at extracting large payments in fines from financial institutions.

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