

it's our business

newspad of the Employee Share Ownership Centre

Organised shareholder power is on the march

Private investors in **Royal Bank of Scotland (RBS)** are mounting a campaign to force the state-backed lender to set up a new shareholder committee to give them some powers over the way the company is run.

ShareSoc and the **UK Shareholders' Association (UKSA)**, two leading advisory groups, have assembled 160 retail investors in RBS to put forward a special resolution at the bank's agm in May, calling on the lender to establish a panel of shareholder representatives to strengthen corporate governance. They seek a bigger say on executive reward packages, company strategy, compliance and director appointments. Investors hope RBS will serve as a test case so other companies will consider installing a shareholder committee.

If their resolution succeeds, it would pave the way for employee shareholders to get together and push for their representatives to join shareholder panels. Those interested should contact Centre member UKSA for advice on how to do this.

It is as yet unclear how many share plan administrators would want to get themselves involved with such a campaign.

As RBS is 72 percent owned by the taxpayer, the associations believe their campaign will test the Government's willingness to overhaul corporate Britain, which Theresa May has made a priority since becoming prime minister.

Cliff Weight, of Centre member remuneration consultants **MM&K** is co-ordinating this campaign. If you are an RBS shareholder and would like to support the campaign, please reply to Cliff at: rbs.campaign@sharesoc.org He will send you by email the resolution to sign and post back. Then he will submit the resolution to RBS and vote on it at the agm. Centre chairman Malcolm Hurlston, has already signed the resolution.

The Government published a green paper last November outlining a raft of measures to improve governance, including a proposal to establish so-called senior shareholder committees at firms to examine executive pay, company strategy and director appointments.

ShareSoc and UKSA said their resolution

From the Chairman

Populism in the United States, in our topic, goes back to Huey Long, Governor of Louisiana, whose slogan was "Every man a king (but no one wears a crown)." His son Russell Long was a US Senator for nearly 40 years and it was he who, putting his father's legacy into practice, introduced the bulk of Esop legislation there.

Huey's life was cut short by political assassination but his 1934 manifesto: Share the Wealth is worth an extended glance. It was highly redistributive and promised free education and training, pensions and a guaranteed annual family income.

All this - plus a major programme of public works - was to be paid for by limiting executive reward and the accumulation of excessive wealth. Taking the dollar of 1934 to be worth \$18 today, I estimate he was calling for a family income of \$36-45,000 dollars with a limit on maximum income at \$ 1.35 million.

Of course the plans introduced by his son sought merely to share the capital worth rather than primarily to redistribute it but employee ownership is a natural destination on the populist direction of travel.

In the UK, populism won the referendum without becoming an electoral force. Nonetheless the JAMs - people just about managing in the May government phrase - are much the same people as the Louisiana electorate to which Huey Long addressed his appeal.

We are told the May theory comes from Joseph Chamberlain known as Radical Joe, Mayor of Birmingham and later MP and minister. Like Huey Long he wanted redistribution to pay for his reform agenda. As he put it bluntly: 'What ransom will property pay for the security which it enjoys?'

Theresa May will be constrained by her party, as was Joe, but what gives most hope for our agenda is her determination to drive from no 10, like Margaret Thatcher and Gordon Brown who did us proud.

Populism? There could be a new golden era for spreading the wages of capital.

Malcolm Hurlston CBE

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“represents a valuable opportunity for RBS to lead the way in exploring” the idea of committees. RBS, which was bailed out at the height of the financial crisis, “is an important asset and its ownership and the way it is governed is of interest to the wider public”, they argued, adding that forming a shareholder committee would help to prevent a repeat of the lender’s near-collapse in 2008.

RBS, led by Ross McEwan, has not made an annual profit since its £45.5bn Government rescue and continues to wrestle with problems from its troubled past. The push to increase shareholder influence at RBS comes as its directors consider plans to slash reward packages for under-pressure senior management, a move that would see Mr McEwan’s potential reward under his long-term incentive plan cut from £3m to £1.75m. The remuneration committee discussed plans to make Mr McEwan and other senior managers hold on to a larger number of the RBS shares paid out through the LTIP scheme when they vest. The proposals will be discussed by RBS’s largest shareholders shortly and put into a form that can be voted on at the bank’s agm.

If the shareholder committee resolution makes it onto the agm agenda, it would put pressure on **UK Financial Investments (UKFI)**, RBS’s majority shareholder, as the proposal would require the support of 75 percent of shares voted at the meeting to pass. UKFI manages the taxpayers’ stakes in RBS and in rival **Lloyds Banking Group** and is meant to operate at arm’s length from the government, although critics have questioned its independence from ministers. Given the size of its RBS holding, it has the power to potentially block the resolution. UKFI could abstain from voting, meaning ShareSoc and UKSA would need to secure the requisite backing from minority shareholders for the resolution to be approved.

The way companies are managed - and how much top executives are paid - has been under particular scrutiny following the collapse and loss of 11,000 jobs at **BHS** and revelations about pay and working conditions at **Sports Direct**.

This attack on what are perceived as autocratic company boards came at the same time as two damning reports on ever-rising UK executive reward levels.

The link between what senior executives are paid

and a company’s financial performance is negligible, new research suggests. The median pay for ceos at Britain’s 350 biggest companies was £1.9m in 2014 - a rise of 82 percent in 11 years - the study by **Lancaster University Management School** found. However, performance as measured by return on capital was less than one percent during that period. The report’s authors said the findings suggested a “material disconnect”.

The study, commissioned by the investment association **CFA UK**, said the increase in executive remuneration was largely driven by performance-based pay. It said the metrics typically used to gauge company performance, such as total shareholder return and earnings per share growth, were driven by the short term.

The research suggested the need for “a more refined discussion about the type of performance measures employed” rather than remuneration levels and performance-related pay arrangements alone.

Will Goodhart, head of CFA UK, said: “Too few of today’s popular approaches ... genuinely align senior executives’ pay with the economic value that they create.”

Ceos of companies in the care sector were the best paid, with an average of £2.9m, then those in the basic materials and oil and gas sectors on £2.2m, and telecoms at £2.1m. Top executives in the lowest-paid sectors included technology - averaging £1.3m and industrials £1.1m, which the authors said were “hardly trivial amounts but significantly lower nonetheless”.

*Ceos of big UK companies are part of a pay premier league, earning substantially more than their continental European peers. However, unlike in football, where total spending on players is reflected in team performance, paying a UK ceo more does not guarantee improved results, according to a comparative research by **Vlerick Business School**’s executive remuneration centre. Xavier Baeten, the centre’s founder, said: “People say ‘if you pay peanuts, you get monkeys’. Our study doesn’t show that you can pay peanuts, but it does show that you won’t get the best ceos by overpaying them.” The study of 701 companies found that UK ceos receive a higher proportion of their total remuneration as variable pay, relative to continental European business leaders. Such bonuses and long-term incentive plans are often tied to earnings per share and total shareholder return, which Prof Baeten

WHITE & CASE

warned could encourage short-termism and “may even be dangerous”. Executive pay has become a lightning rod for discontent about inequality and unfairness in the UK, said the *Financial Times*. The Vlerick study found that the median total pay, incentives and pension contributions of ceos of the biggest UK companies by market value was €6.175m in 2015. That was almost 50 percent higher than ceos of similarly sized German companies, who were the next best paid, and almost one and a half times the overall earnings of chief executives at Sweden’s biggest companies.

*The ball began to roll in 2015 when, out of the blue, John Cryan, Deutsche Bank’s ceo, told a conference that he did not understand why he had a bonus clause in his contract, because “I will not work any harder or any less hard in any year, in any day because someone is going to pay me more or less”. He is threatening to cut back senior manager bonuses substantially at Deutsche Bank this year due to its poor financial performance and heavy compliance behavioural fines. Deutsche Bank, which has to pay a \$7.2bn fine to the U.S. Department of Justice for allegedly mis-selling securities backed mortgages, is looking to claw back some of the millions it paid to those who landed it in its current state. The German daily *Sueddeutsche Zeitung* reported that the bank is looking to reclaim tens of millions of euros in bonuses from its three most recent ceos—Josef Ackermann, who ran the bank from 2002 to 2012, and his successors Anshu Jain and Jürgen Fitschen. Ceos of FTSE 100 companies have a median reward package of £4.3m, according to the **High Pay Centre**, which works out at 140 times that of the average worker.

*More than one-third of U.S. companies (36 percent) expect to pay annual bonuses for 2016 performance that exceed 110 percent of target, according to a survey of 260 corporate executives and compensation professionals conducted during a webcast presented by Centre member **Willis Towers Watson**. However, 35 percent of companies plan to pay bonuses at 90 percent of target or below. The remaining 29 percent expect to pay annual incentives close to target, according to the findings, according to the survey. The Willis Towers Watson survey results reflect a mixed bag in the US economy, says Steve Kline, consulting director, executive compensation for Willis. “Bonuses in corporate America are hard wired to financial goals and there’s not a lot of latitude to goose it because it was a good year,” says Kline. He adds, “We have been in a pretty low growth economy for a while and goals were not that high. We haven’t seen 10-15 percent growth goals [since the recession of 2008]. So three percent earnings growth isn’t going to cut it in 2017.”

*Global investment funds say 2016 should serve as a wake-up call for **Australian** boards on the issue of executive pay, with some company

executives paying themselves too well. In the wake of a string of hostile pay votes this year, the usually passive investment funds are waking up to the issue of pay, warning boards to rein it in or face further backlash from large shareholders and the general public

In a trend that is seeing the emergence of the ‘sleeping giants’ into a discussion about inequality in the broader community, the world’s biggest funds say more needs to be done to justify bigger reward packages in 2017. Pru Bennett, head of **BlackRock**’s Investment Stewardship team, says Australian boards are out of touch when it comes to changes in the global economy that has seen wages stagnate and inequality grow.

*PM Theresa May said she wanted to stop an “irresponsible minority” of companies acting badly and to ensure “everybody plays by the same rules”. Among the measures under consideration are pay ratios, which would show the gap in earnings between the chief executive and an average employee. Shareholders would be handed more powers to vote against senior executives’ pay. The Green Paper signalled that companies could be forced to give shareholders more power over executive remuneration, such as a binding vote at businesses – but only where directors had faced “significant opposition” to their salary and bonus deals. However, this was a retreat from her comments after becoming prime minister in July, when she suggested executives should be subject to an annual, binding vote on their remuneration. Companies could be told to publish their pay ratio – the difference between the wage packet of their best-rewarded member of staff and the least well paid.

Stefan Stern, the director of the High Pay Centre, welcomed the CFA report, saying companies placed too much emphasis on suspect measures of performance: “It’s very hard to measure performance intelligently because share prices move for all sorts of reasons beyond the control of the ceo or senior management,” he said. “[Excess pay] is an error based on a false premise that you can construct some sophisticated formula that will link performance to pay. We just want firms to exercise a discretion that is lacking. They’ve fallen back on intricate and elaborate contracts to do the job they should be doing themselves, which is to exercise judgment.” Large pay packets were often about making sure executives do not move to another company, rather than a measure of their efficacy, Stern said.

Helena Morrissey, chair of **Newton Investment Management** who was guest editor of **BBC Radio 4’s Today** programme last week, said lessons from the financial crisis had not been learned: “Despite acknowledging that group-think played a big role in causing the financial crisis, many of those at the top seem to have either been oblivious or dismissive of the risks of the widening gulf,” she said. “Executive pay has kept on rising, and leaders have behaved as if it were business as usual.”

Shareholders are increasingly hitting out at excessive executive reward, with investors in **BP, Smith & Nephew and Anglo American** all voting against senior executive reward packages at their agms last year.

*The **Investment Association (IA)** wrote to the chairs of remuneration committees setting out the changes made to the IA's *Principles of Remuneration*. These have been reviewed and amended by the IA in order to reflect the recommendations of the Executive Remuneration Working Group. These amendments:

- acknowledge the need for increased flexibility of remuneration structures
- aim to ensure that the Principles do not promote a single remuneration structure
- aim to ensure that the level of remuneration has appropriate focus and that companies should disclose pay ratios between the ceo and median employees, the ceo and the executive team, to provide context
- include a new section on the importance of improving shareholder consultation, ensuring that it is based on the strategic elements of remuneration and leads to a proper consultation process
- encourage post retirement shareholding guidelines.

The IA sets out matters that investors will be looking at in 2017 and highlights issues to be focused on ahead of the 2017 agm season. Investors have asked the IA's research arm, the **Institutional Voting Information Service (IVIS)**, to give a *Red Top* to a remuneration report where there is failure to give full retrospective disclosure of financial targets. In addition, a full explanation of why personal and strategic performance targets have paid out is expected in order to avoid an *Amber Top* being given to a remuneration report.

EVENTS

Newspad summits 2017

More Centre member support is sought for two new-style international events this year, reflecting *vox pop* at the Centre's successful British Isles symposium. International director Fred Hackworth is looking for sponsors and outline commitments for speaker roles and/or attendance. Both will be *newspad summits* for leading industry players and thinkers - with high level papers and extra time for discussion - backed up by the Centre's administrative team.

The first (summit) is planned for **Paris**, home of the OECD (Organisation for Economic Co-operation & Development) whose importance grows for share plans. The provisional dates are **Thursday June 15 and Friday June 16**. Senior Centre member

Clifford Chance has kindly offered to host this planned this *Newspad Summit* at its splendid offices in rue d'Astorg, in the city centre, on those dates. The Centre will recommend accommodation, but allow delegates to arrange what suits them best. If you are interested in speaking at such an event, alongside OECD and French experts, **please let us know asap**.

The second *summit*, with focus on shared UK and North American issues, is planned provisionally for **Calgary** in Alberta, Canada, with the favoured dates being either **Thursday September 28 and Friday September 29** or the same days on the following week, **October 5 & 6**. Already, the Centre has received speaker proposals for this event from: **Narendra Acharya** in the Chicago office of international lawyers **Baker McKenzie**; **William Franklin** of Birmingham UK based **Eso** lawyers **Pett Franklin**; **Fred Whittlesey** of Seattle-based **Compensation Venture Group**; and **Garry Karch** of **RM2**. **Amanda Flint** of **Mercer** has expressed interest too. Holding the ring for Solium UK is **Martin Osborne Shaw**. More speaker offers are most welcome.

This follows the Centre's succès d'estime with the Federal Reserve Bank in New York. Calgary is close to the ski resorts at Banff. The Centre is in discussion with Solium about co-sponsorship in Calgary, but a return to New York is not yet excluded. Comments and/or offers of help would be most appreciated and should go to summiteer-in-chief, the Centre's international director Fred Hackworth at: fhackworth@esopcentre.com

London share schemes for SMEs conference 2017

The next Esop Centre-Institute of Directors London share schemes for SMEs conference will be held on Tuesday September 12 2017. Save the date.

Obituary

The Centre is deeply saddened to report the death two weeks ago of **Dr Raymond Allouf**, former secretary general of the Paris-based **International Association for Financial Participation (IAFP)**. Senior Centre Davos attendees will remember



his lucid and sharp summaries, delivered in perfect English, about French style employee share ownership. Raymond was a highly-trained food chemist and engineer who had several worldwide patents over metallurgical processes, relevant to his work as a Metal Box UK director for several years. He was a top graduate of the **EN écoles**

d'ingénieurs, a holder of the **Lavoisier Medal** – and at the Centre's last Paris conference, Raymond and Centre chairman Malcolm Hurlston both received the prestigious **Rémy Schlumberger Award** for services to the employee share ownership movement. Raymond was in his 80s when he died in Paris. Our warmest condolences to Sophie and the rest of his family.

MOVERS & SHAKERS

***Janet Cooper**, co-founder of Tapestry, was awarded the OBE in the Queen's New Year Honours list.

*Centre trustee member **Elian** was fully absorbed into Dutch-based **Intertrust** last month (December) following the recent takeover, so its former name 'Elian' will gradually disappear from use. "This was a key milestone in the integration of our two companies and represents the coming together of our businesses to provide exemplary services to all our clients and the intermediary network we work alongside," said **Paul Willing**, md, Atlantic Region T +44 1534 504234 E: paul.willing@elian.com. As a combined group, Intertrust employs 2,400 professionals operating from 41 offices in 30 of the most important financial markets around the world. It has a larger network of offices and expanded services, including: more staff in London, Cayman, Guernsey, Luxembourg and the Netherlands; new offices across the Middle East, Asia, Europe and the Americas and broadened services in corporate Services, capital markets, private equity and real estate funds, private wealth, employee incentives and compliance & regulatory services.

*Centre trustee member **Sanne** announced that it had acquired **Sorato Trust**, a Dutch based corporate services business group. Sorato, which has been Sanne's business partner in the Netherlands for more than five years, was founded in 1992 and is regulated in the Netherlands. Its core services include the provision of directors, registered office, tax compliance, accounts preparation, secretarial and regulatory reporting. "The Netherlands is a key jurisdiction which supports our growth strategy in Europe," said **Dean Godwin**, Sanne's ceo. "Sorato has a number of shared clients with SANNE and this will serve to strengthen the Group's institutional client relationships." For more information about Sorato, visit www.soratotrust.nl

SANNE employs more than 700 people worldwide and has more than £100bn in assets under administration.

***Equiniti Registration Services** won *Best Registrar for 2016* at the 21st Annual Investor Chronicle Investment & Wealth Management Awards ceremony in London.

***Billington Holdings** confirmed that **Ocorian** - formerly known as Bedell Trust - as trustee for the

Billington Holdings Plc ESOT – had sold 170,993 ords for £2.05 each. The AIM-listed firm said that, as a result, the trust now holds 185,919 ords, which represents 1.43 percent of the issued share capital.



UK CORNER

Tax advisers put on notice

Tax advisers who promote dodgy tax avoidance schemes face new threats from both within the UK and the EU. The UK accounting and tax professional bodies jointly issued a revised version of professional and ethical standards for tax advisers, which will apply to tax advisers from March 1, said Centre member **Deloitte**. It includes a standard which states that members "must not create, encourage or promote tax planning arrangements or structures that set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation, and/or are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation." Breaching this requirement may result in disciplinary action. The new guidance has been endorsed by **HMRC** and by Financial Secretary to the Treasury, Jane Ellison.

See: <http://deloi.tt/2fhqWYi>

The new professional conduct relating to taxation is at: <http://deloi.tt/2fBOMTF>

There are FAQs at: <http://deloi.tt/2fdJf1V>

Historically, some employee benefit trusts have been used for tax avoidance schemes. Fairly recent examples include high profile court cases concerning the legitimacy or otherwise of schemes used to reward employees in the sports and entertainment worlds.

As signalled in Budget 2016, the government will introduce a new penalty for any person who has enabled another person or business to use a tax avoidance arrangement that is later defeated, added Deloitte. This aims to provide a strong deterrent to those advisers who facilitate tax avoidance. The new regime will reflect an extensive consultation and input from stakeholders and details will be published in draft legislation shortly. The government will remove the defence of having relied on non-independent advice as taking 'reasonable care' when considering penalties for any person or business that uses such arrangements.

At the same time, the **European Commission** launched a consultation to gather views on possible future rules to 'deter promoters of aggressive tax planning schemes.' In particular, the Commission is interested in learning how a mandatory disclosure scheme for tax advisers could be put in place. Such rules would oblige intermediaries to give early information on schemes which could be viewed as aggressive or abusive planning for tax purposes. The deadline for responses is **February 16**.



COMPANIES

Ocado ceo Tim Steiner is a participant in the Ocado Share Incentive Plan (SIP), as approved by shareholders at Ocado's 2011 agm. Employees can purchase company ords of two pence each at market value (partnership shares), using deductions from salary each month, and receive allocations of matching ordinary shares of 2p each (matching shares). Mr Steiner purchased 60 partnership shares at a price of 2.515 per share, and was granted nine matching shares. These shares are held by the employee benefit trust for the SIP.

Sports Direct founder Mike Ashley is being sued by his ex-strategic development director Jeff Blue over allegations that Ashley breached an agreement over pay, according to *The Guardian*. Blue used to work for **Merrill Lynch**, a top US investment bank that served as a key advisor to Sports Direct until 2012. The bank moved away from the sportswear retailer four years ago because of concerns it manipulated its share prices. The ex-banker alleges that: "In autumn 2012, Merrill Lynch withdrew from acting as Sports Direct's corporate broker. "Merrill Lynch did so as a result of concerns that it had regarding Sports Direct's corporate governance, including the propriety of Sports Direct's decision in August 2012 to fund the *Sports Direct Employee Benefit Trust (EBT)* to buy-back shares for the benefit of the firm's employee share scheme, without complying with the Buy-back and Stabilisation Regulation as would ordinarily be required by a buy-back of shares by the Sports Direct itself." This move may breach City rules as companies must inform the market if they are about to buy their own shares. In addition, the £20m bought may have overstretched the permitted allowance of shares which could be bought in one day. If these had not been bought by the EBT, Sports Direct may have been forced to offer them to

a wider market, lowering the share price. Ashley allegedly promised to pay Blue a £15m bonus if the company's share prices reached more than 800p, a 'pledge' which allegedly was not honoured. Despite Sports Direct's share prices reaching 992p in April, a long list of public uproar and financial woes brought this down to 300p.

Centre seeks private equity Eso

The Centre and the **British Venture Capital Association (BVCA)** have joined forces to urge the government to bring employee share schemes into the private equity sector. In a letter to Treasury ministers, Centre chairman **Malcolm Hurlston** outlined the need for a mechanism which would facilitate such a move, but acknowledged that this is no easy ask. Over the years, the BVCA has steadily softened its opposition to employee share schemes, which was based on the traditional reluctance of venture capitalists to see their shareholdings diluted by Eso. Nowadays, most see Eso as an advantage on several fronts, not least for those companies in which they are invested that qualify for EOT status or the Enterprise Management Incentive (EMI).

Finance Bill 2017

*Draft Clauses for **Finance Bill 2017** were published on December 5 last year, reported Centre member **Deloitte**. An overview of the draft clauses, the text of the draft clauses and the draft explanatory notes can be accessed at <http://deloi.tt/2h1n93n> The draft clauses and explanatory notes relating to NICs are at <http://deloi.tt/2hhhdGf> The closing date for comment is **February 1**. The new rules restricting tax benefits from salary sacrifice arrangements from April 6 2017 were included in the draft clauses. Further draft legislation covering *Making Tax Digital* will be published shortly. There will be draft clauses on clarifying the tax treatment on partnerships and on Social Investment Tax Relief.

*Following consultation, the government published draft legislation aimed at reforming the **substantial shareholding exemption (SSE)** to make it simpler, more coherent and more internationally competitive. Deloitte said: "The SSE is a key element in ensuring that the UK is an attractive place to do business. The regime is relatively broad in scope and generally works as intended; however, there are areas of complexity and uncertainty. The removal of the investing company requirement is a significant step forward in reducing the administrative burden and complexity facing businesses. The removal of this condition addresses the issue of non-trading group activities tainting the availability of SSE on the disposal of active trading companies. Simplifying the rules should reduce the number of companies needing to clear their SSE

position with HMRC in advance. In addition, it will no longer be necessary for groups to consider liquidating holding companies after the sale of all, or a substantial proportion, of their trading subsidiaries in order to claim the subsidiary exemption. One area where clarification would have been particularly welcomed is in the area of partnerships, however, neither the consultation response document nor the legislative changes make clear whether HMRC has changed its general view about the treatment of partnerships when determining whether there is a group.”

The changes to the SSE rules in Finance Bill 2017, which will take effect for disposals on or after April 1 are:

*Removal of the investing condition - the requirement that the corporate shareholder (the investing company) be a trading company or a member of a trading group is to be removed.

*Amendment to the investee company test - the company being sold (the investee company) must still be a trading company, or holding company of a trading group. The only change to the investee company test is the removal of the post-disposal trading requirement for disposals to non-connected parties.

*The substantial shareholding test - holding a ten percent or greater holding - is extended from 12 months in the two years prior to disposal to 12 months in the previous six years. In situations where a prior disposal has left a below ten percent shareholding to be disposed of, this will allow five years within which the disposal of the remaining shares will be covered by the SSE.

A broader exemption for qualifying institutional investors will apply to the disposal of shares held by a UK company owned by institutional investors, such as pension schemes, investment trusts, persons that have sovereign immunity and charities (but not REITs). The company invested in test is removed and the substantial shareholding may be met if the investing company’s shareholding is less than ten percent but the cost of acquisition of that shareholding was at least £50m. If 80 percent or more of the ordinary share capital of the investing company is directly or indirectly held by qualifying institutional investors, the gains and losses arising from the disposal of a substantial shareholding by the investing company qualifies for full exemption; there is a partial exemption, representing the interests of the qualifying institutional investors, where their interest is 25 percent or more, but less than 80 percent.

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Employee shareholders grow savvy

Recent research from Centre member **Equiniti** shows that of 6,000 investors surveyed, half of them

first acquired shares through a company share plan, said **Phil Ainsley**, md of Equiniti’s employee services business. Phil told Equiniti’s latest news bulletin: “Our analysis shows that after saving for either three or five years, 48 percent of employees who acquire shares at Sharesave maturity, choose to sell either some or all of their shares through an immediate sale facility. Other maturity choices such as transferring shares into an ISA or pension scheme, transferring shares to a spouse or civil partner and holding shares in a nominee vehicle are used too.”

Statistics show that 68 percent of participants still retain some of their shares after maturity, proving that not only do employees make investment choices at plan maturity but that they continue to have an on-going interest in holding shares.

HMRC statistics reveal that there are almost eight million awards/purchases of SIP shares to employees annually, though the monthly investment of partnership shares accounts for more than half this figure. Annually, more than 240,000 UK employees either withdraw or sell SIP shares.

“SIP shares are held in trust on behalf of employees who are able to view their shares and transact online. Major companies such as Royal Mail, Tesco, M&S, GSK and BT offer this plan through which employees can build a savings nest egg and learn about receiving and reinvesting dividends as well as buying and selling shares, helping them to better understand share ownership.”

Phil added: “By looking at the pattern of sales and comparing with the share index, we can see that employees with SIP shares take an active interest in their companies’ share prices and are more financially savvy than you might think.

“Our graph plots the FTSE 350 share index alongside the daily number of SIP sales carried out by Equiniti on behalf of employees. It shows that there is a correlation between rising/falling share prices and the number of SIP sales, one indicator that employees who have SIP shares are sensitive to share prices, checking them out regularly before making a decision whether or not to sell. Our statistics show an employee accessing our online SIP dealing pages will, on average, obtain four quotes prior to making a sale decision.”

With SIPs, there are various triggers for employees when deciding to sell shares, including reaching three and five-year award anniversaries for free shares (when they become available to sell and there are changes to their tax treatment). Equiniti’s graph shows peaks in sales activity when such events occur and that employees do track the share price and take the opportunity to realise cash when they see prices rising.

Phil noted: “Decisions about when to join SIP and Sharesave plans and how much to invest, when and how many shares to sell and what to do with dividends, provide a great introduction to share

investment for employees. As holdings increase in value, employees need to understand diversification and risks associated with ‘all your eggs in one basket’, then be equipped with information so they are comfortable with making further investment decisions that include share trading, spreading risk and financial planning for the short, medium and longer term.”

The average value of SIP holdings per employee is around £9,000, although since their initial introduction in Finance Act 2000, some participants have built up holdings with values in excess of £140,000. As partnership shares are purchased monthly (along with any monthly matching share awards), shares become available to sell on a monthly rolling basis. There is no CGT payable on any increase in value while shares are in the plan, so employees tend to sell some of their shares whilst keeping the remainder within the plan.

Worker directors a mirage?

In her November speech to the TUC, Theresa May appeared to row back on having worker representation on boards. The speech suggested that the scope for significant worker representation on boards in the future was limited. She confirmed that there was no intention to impose a binary board structure of the type used in Germany, or to require the creation of works councils or the direct appointment of workers or trade union representatives to the board.

“To the disappointment of some, the new emphasis is on ensuring that employees’ views on business decisions are heard rather than giving them a seat at the boardroom table,” said Centre legal member **Clifford Chance** in its latest - *UK Employment Update*. “Following this teaser, the Government published its Corporate Governance Reform Green Paper, which explores various options for strengthening the voice of employee (and other) stakeholders at boardroom level in large companies. Various options are mooted and they could be used either individually or in combination:

- *Creating a stakeholder advisory panel for directors to hear directly from their key stakeholders (including employees);
- *Tasking selected non-executive directors with ensuring that the voice of the employees is being heard at board level;
- *Appointing individual stakeholder representatives to company boards, though the Government is not proposing to mandate the direct appointment of employees or other interested parties to company boards; and
- *Strengthening reporting requirements related to stakeholder engagement.

Views are sought on which companies should be brought into any new employee stakeholder regime; this may be dictated by employee numbers or some other size threshold.

“It is not yet clear whether a legislative, code-based or voluntary approach will be adopted to implement any new regime. Responses to the Green Paper must be provided by **February 17**.

“Whichever of the proposed Green Paper options for strengthening the voice of employees at board level is eventually adopted (if any) the reality is that any new legislative or voluntary regime to implement them is not imminent,” added Clifford Chance. The government’s Green Paper can be found at: <http://tinyurl.com/htlh15p>



WORLD NEWSPAD

Tax transparency

The demand for corporates and wealthy individuals to adopt greater tax transparency continues to build momentum – the significance of the global reaction to it makes the recent UK Autumn Statement seem like chicken feed, said lawyers *Squire Patton Boggs*. The reforms being formulated could have a dramatic impact upon tax strategies and corporate governance generally. Whilst it will present a headache for some C-suite executives, it may make the job of a pension plan trustee easier when assessing the value and strength of the sponsoring employer, particularly where that employer is part of an international group of companies.

Recent developments in this area include:

*In November 2015 the G20 endorsed an **OECD** action plan to tackle BEPS (Base Erosion and Profit Shifting) by large multinationals. This is attempting to target an estimated loss to global tax revenues of US\$100 to 240 bn annually. In addition to the G20, it has involved a group of 80 developing countries.

*Last April, the **European Commission** proposed a directive obliging large multinationals to disclose their tax and earnings within the EU. Separately EU member states have agreed on a directive to exchange tax-related information on the activities of multinational companies.

*Since last June 30, UK non-listed corporate entities are required to file with Companies House a record of their ‘*Persons with Significant Control*.’

*Last November, more than 100 jurisdictions

concluded negotiations on a multilateral instrument that will implement a series of tax treaty measures to update international tax rules and lessen the opportunity for tax avoidance by multinational enterprises. The signing ceremony will be in June this year.

The combined effect of these developments and other is that top executives in large companies will be under increased pressure to ensure that the tax strategies employed in relation to their corporate and personal wealth are fair and reasonable. Even if no change of approach is necessary, they may need to comply with additional red tape.

While this may present a challenge to corporates, the expected increase in financial transparency may make the job of a pension plan trustee a little easier. A key role of a defined benefit occupational pension plan trustee is to understand the ability and willingness of the sponsoring employer to make good any funding deficit.

EU shareholders' rights directive - vote on company pay

The EU's committee of permanent representatives (COREPER) endorsed an agreement between the European Parliament and the Slovak presidency on a revision to the Shareholders' Rights Directive that aims to strengthen shareholder engagement in large European companies and reduce short-term risk taking.

Under the new rules shareholders will have the right to vote on the remuneration policy of the directors of a company. This policy should "contribute to the overall business strategy, long-term interests and sustainability of the company and should not be linked to short-term objectives", the statement said. Directors' performance should be assessed on the basis of "both financial and non-financial performance criteria, including where appropriate environmental, social and governance factors", it added.

Lucia Žitánská, Slovakia's minister for justice, said: "The financial crisis revealed that in many cases shareholders supported excessive short-term risk-taking by managers. The revised directive is intended to redress this situation and contribute to the sustainability of companies, which will in turn help generate growth and create jobs."

Institutional investors and asset managers will have to develop and disclose their policies on shareholder engagement, and on managing any real or potential conflicts of interest such as where they have a significant business relationship with the company being invested in. Under the new directive companies must be able to identify their shareholders, and obtain information on shareholder identity from any intermediary. This is designed to help shareholders to exercise their rights and engage with the company.

Member states can decide whether to allow companies to only request identification for those shareholders who hold a certain amount of shares, although this must not be more than 0.5 percent. Proxy advisors will be subject to a code of conduct and to transparency requirements that reflect their potential influence on voting behaviour.

"Many institutional investors and asset managers use the services of proxy advisors who provide research, advice and recommendations how to vote in general meetings of listed companies. While proxy advisors play an important role in corporate governance by contributing to reduce costs of the analysis related to company information, they may have an important influence on voting behaviour of investors," the statement said.

The new directive covers transactions with related parties, which "may give the related party the opportunity to appropriate value belonging to the company". These must now be approved by shareholders or their administrative or supervisory body, and companies will have to provide information on any publicly material transactions to allow shareholders to assess the fairness of the agreement, it said.

Remuneration expert Suzannah Crookes of Centre member **Pinsent Masons** said: "The directive addresses a number of issues where there have been recent developments in the UK, for example the identification of shareholders where the UK now has a requirement for a register of 'people with significant control.' Executive remuneration and in particular the link with strategy and long-term sustainability is particularly under the spotlight in the UK with the government's green paper on corporate governance reform having directors' pay as one of its key areas of focus," Ms Crookes added "From a UK perspective it will be interesting to note the extent to which finalised arrangements in relation to executive pay, both under the directive and domestically, will overlap and to see how implementation of any differing requirements will work out in practice especially for multi-national groups in the context of the UK's leaving the EU."

French tax change impacts share plans

Just before Christmas the French Parliament voted to reduce the tax benefits of free share plans for both the employer and the employees. The tax relief-qualified free shares regime was introduced in 2015 by former Economy Minister Emmanuel Macron, and has been highly political ever since.

The qualifying rules for the tax benefits are tricky, and many non-French companies have struggled to implement these plans, said **Bob Grayson** of Tapestry.

There are two key changes to the tax regime for qualified free share awards:

*to the extent any acquisition gain exceeds €300,000 annually, the portion exceeding that amount will be taxed as salary, rather than as a capital gain; and

*the employer social security due on acquisition of the shares will increase from 20 to 30 percent

Taxing part of the acquisition gain as salary means that favourable tax allowances (of up to a 65 percent reduction in the size of the gain for tax purposes, depending on how long the employee holds the shares) will not be available on that portion of the gain. This means that the effective tax rate on any gain exceeding €300,000 will increase significantly. The new, less favourable, regime will only apply to grants that are authorised by shareholders after publication of the French Tax Bill. It is unclear at this stage whether and how this new regime will apply to grants of qualified free share awards made in 2017 by non-French companies that did not (and did not need to) obtain shareholder approval. These changes will not affect qualified free share awards that were granted prior to publication of the French Tax Bill, and these awards will continue to benefit from the existing, more favourable tax regime (subject to complying with the French rules).

As part of the 2017 budget, the French government confirmed that an Income Tax withholding system would be introduced for French tax residents and this will affect employee share plans. Currently, French tax residents pay income tax in the following year, via their annual tax return. It is proposed that from January 1 2018, the employer should operate income tax withholding on employment income. The draft bill could be adopted as law shortly. Once introduced, income tax withholding would generally apply to all employment income (including salary and bonuses). The impact on share plans is as:

**Non-qualified share plans* – withholding should be operated on the gain at vesting (for RSU type awards) or exercise (for stock options).

**Qualified share plans* – these plans will continue to be exempt from withholding. However, it is expected that individuals would be required to make advance tax payments to the French tax administration in the year the shares are sold.

Bouygues launch new Esop

Telecoms giant **Bouygues** launched a new employee share ownership plan, *Bouygues Confiance n°8*, which involves a capital increase of a maximum of €150m (inclusive of share premium) reserved for employees of French companies belonging to the group, to be effected via a dedicated mutual fund (an FCPE), the units in which will be subject to a lock-up period of ten years except where early release is allowed under the law. A maximum 7,400,463 new shares will be issued at a subscription price of €20.30 each. In accordance with provisions of the French Labour Code, this price is equal to 70 percent of the average opening quoted market share prices on the 20 trading days preceding the date of

the decision setting the opening date of the subscription period. The subscription period ran out on December 2. They will be admitted for trading on the Euronext Paris market (on the same quotation line as existing Bouygues shares) as soon as possible after completion of the capital increase, which was scheduled for December 28, last year. “This plan gives Bouygues employees a stake in the group’s development and performance over the long term, and demonstrates yet again the proactive approach to employee share ownership which is a core component of the group’s culture and values,” said a company spokesman.

EUROPEAN UNION

*The **European Council of Ministers** adopted a Directive which grants access for tax authorities to information held by authorities responsible for the prevention of money laundering. This will require member states to provide access to information on the beneficial ownership of companies, and enable tax authorities to access that information in monitoring the application of rules on the automatic exchange of tax information. The Directive will apply from January 1 2018 and member states will have until December 31 this year to transpose the Directive into national law. For further details see the press release at <http://deloi.tt/2gkZ9cx>

*The European Commission published the 2016 edition of *Taxation Trends in the European Union* which contains a detailed statistical and economic analysis of the tax systems of the 28 EU member states, plus Iceland and Norway. Part 1 contains an analysis of Europe-wide trends, while Part 2 comprises country chapters covering the 28 EU member states, plus Iceland and Norway. For each country, key taxation indicators are provided on tax revenues as a percentage of GDP for the years 2002 to 2014. There are tables summarising the latest tax reforms in each country and the main features of each system for personal and corporate taxes, VAT, for social security contributions and for wealth and transaction taxes. See <http://deloi.tt/2gcRUFJ> The Country-by-Country Reporting (CbC) notification matrix is available on Deloitte.com. The matrix provides a snapshot of the CbC notification deadlines by country and can be accessed through the Global Tax Reset page. Notifications will be required for reporting periods ended December 31 in countries where the **OECD** model legislation about CbC reporting has been adopted verbatim. Certain countries require ‘early’ notification to the tax authorities - by December 31 last year: **Austria, Bulgaria, Denmark, Ireland, Luxembourg, Portugal and Spain**. In some cases, the details of when, what or how to report are still being finalised and/or guidance is being drafted.

*The Commission published the 2016 edition of *Tax Policies in the European Union*. This looks at how

member states' tax systems help to promote investment and employment, how they are working to reduce tax fraud, evasion and avoidance, and how tax systems help to address income inequalities and ensure social fairness. It includes options for reform. See. <http://deloitte.tt/2fo8BJt>

Member states determine success of Eso policies

The number of employee shareholders in Europe declined slightly from 2011, before stabilizing in 2015, said a report. The development of all-employee share ownership within the EU tends to depend mainly on incentive policies whose continued existence is at the whim of member governments of differing political colours, it said.

The impact of the worldwide financial crisis in 2008 on Eso was considerable, but the impact of the policy decisions taken in EU member states was probably the most important factor in this change. Some took anti-Eso decisions, removing or decreasing fiscal incentives, which led to a decline of the number of employee shareholders. Others applied new or higher incentives, which led to a higher number of employee shareholders.

Recent policy developments paved the way towards higher incentives for employee ownership: Poland is preparing legislation; the Swedish government is considering the introduction of a favourable tax-qualified option regime for SMEs, which could take effect from January 1 2018 and in Ireland, a new share scheme incentive focused on SMEs could be introduced in 2018.

By contrast, in an act of political spite, the French Parliament decided last November that the pro Eso measures voted through via *Loi Macron* (the Macron law) the previous year should be removed - after Macron resigned as French economy minister and quit the Socialist Party in order to stand in the French Presidential election this year.

Ireland initially reduced its fiscal incentives, as did Denmark, Greece and The Netherlands, where all incentives were removed. However, Eso advances occurred in the UK in 2014-2016, as well as in Spain, in Hungary, in Austria which recently doubled its fiscal support and in Romania. In addition, Denmark restored the incentives which had been removed in 2011. One of the first deeds of the incoming Danish Government in 2011 (Ms Thorning-Schmidt, Socialist) was to remove all Eso incentives, but when 'Borgen' was replaced by the new conservative-liberal Danish Government (headed by Lars Rasmussen) last year, the same Eso incentives were restored.

Eso companies do better

Economics teaches that workers put forth greater effort when these efforts are rewarded financially, and top talent tends to gravitate toward jobs and firms where rewards are geared to performance, said

Harvard Business Review. "For the most part, however, the research that's led us to these conclusions has focused on performance incentives for individual workers, such as piece rates, merit pay, individual commissions and bonuses," said the authors.

"Today's reality is different. Since the mid-2000s, broad-based shared capitalist programmes — in other words, programmes where firms offer profit sharing and employee ownership to non managers as well as managers — have spread to cover more employees than traditional forms of individual performance-based pay in Europe and the US. The research has taken time to catch up. But we're finally starting to get a better picture of the impact these incentive programmes have on rewarding employees for the good performance of firms or teams. Until the late 20th century, firms were organised in a top-down hierarchical fashion using production techniques that broke down job tasks into their smallest components. Under these conditions, it made sense for firms to pay piece rates to incentivise workers. Why link financial incentives to groups, teams, or organisational performance when production wasn't set up in that way? What if it risked enticing workers to "free-ride" on the efforts of more industrious co-workers?"

That began to change in the 1980s, most notably with the success of Japanese manufacturing multinationals such as Nissan, which brought in new systems characterised by team production. If it was the collective performance of workers that improved productivity, it started making more sense to reward teams of workers, since it was the outcome of their collective performance that managers were monitoring.

Something else was going on at the same time: Many firms, especially blue-chip firms, wanted their workers to share in the company's prosperity through profit sharing or co-ownership. They saw it as part of 'stakeholder capitalism,' in which corporations started responding to the interests of workers and other stakeholders beyond investors. Government support for such ideas quickly followed. In France, profit sharing is compulsory for the largest firms. In other countries, including the UK and the US, tax breaks have helped support profit sharing and share ownership. For instance, individuals who become part of all-employee share ownership plans (Esops) are given tax breaks to own their company's stock. The introduction of Esops changed the equation by giving employees a financial stake in their firm that came with voting rights and opportunities to participate in company governance.

"All of this progress doesn't answer some questions, however: Does shared capitalism actually work? More specifically, does it boost productivity? To help answer this question, the *National Bureau of Economic Research* undertook a research

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programme with companies using such practices to try to understand why firms adopted them, what they expected from them, and what they got. The conclusion from this body of work, together with similar work conducted in the UK and elsewhere, is that such plans can and do work, often when combined with supportive management practices. This research found that three of the most prevailing concerns about the efficacy of team incentives were more myth than reality.

The first is the 'free-rider' problem. This turns out to be relatively unimportant, primarily because participants tend to informally monitor their co-workers, enforcing reasonable levels of effort among the group. The second is the 'line of sight' problem that arises when employee pay is linked to organisational performance: Why would employees focus on their tasks when the minutiae of what they do may seem to have little impact on the overall output of the firm? Although this sounds like a reasonable objection in principle, it doesn't seem to be important in practice. Study after study shows that employees belonging to Esops and group-based pay schemes tend to identify more strongly with the firm than those on standard fixed-pay contracts, and they tend to work harder as a result.

The third is employees' concerns about fluctuations in their earnings due to events that may have nothing to do with their effort, like the case of a substantial shock in the demand for a good or service. Although this seems like a reasonable concern, studies do not find much of an association between risk aversion and the propensity of workers to enter into shared capitalism."

In addition to debunking these myths, research points to some important motivations behind why group incentives work. For example, some forms of shared capitalism are viewed more as gift exchanges between the employee and the firm. In other words, the company offers something for free, such as shares, in anticipation of worker reciprocation in the form of additional effort. These feelings of reciprocity are often linked to perceptions of fairness and justice underpinning the exchange between labour and rewards, and they can generate organisational commitment and loyalty in a way that a simple bonus or raise cannot.

"Shared capitalism can improve job satisfaction. This is the case even when controlling for the additional income a worker can derive from group incentive plans, suggesting that workers derive value from sharing ownership in their firm over and above the value they get from making additional money. The effect is partly related to the warm glow employees feel in response to the gift of free or discounted shares, and partly to the effect Esops have in dampening the bad aspects of a job. Importantly, individual performance-related pay

plans do not have this positive well-being effect — they can incentivise through income, but they don't affect worker well-being in the same way as shared capitalism programmes. As our society seeks to build better ways to incentivise employees, economists and policy makers alike should spend more time and energy experimenting with shared capitalist incentive systems to further our understanding of what works and why," said the *Harvard Business Review*.

Tillerson's Exxon Mobil shares conundrum

Given all the candidates he considered, President-elect Donald Trump apparently had a tough time deciding on whether to pick **Rex Tillerson**, ceo of oil giant Exxon Mobil, for Secretary of State. Now, Tillerson's soon-to-be ex-board members may have an even tougher decision to make when it comes to what to do with his nine-figure bundle of Exxon Mobil shares. Normally, Trump's State Department pick will be looking at an enormous windfall, no strings attached. He took the lead job at Exxon in 2006, after joining the company 41 years ago. It's the only company Tillerson has ever worked for. Over that time, he's amassed more than 2.6m shares in the oil giant, which—at Exxon's recent price of \$92.75—are worth almost **\$245m**. The appointment will allow Tillerson to sell those shares to prevent conflict of interest issues, and he could do so without the normal stigma of a ceo ditching his own company stock. Tillerson could at least temporarily avoid an eight-figure tax bill. Back in the early 1990s, George H.W. Bush's administration added a loophole to the tax code that allows political appointees to defer any capital gains taxes they would have to pay on investments they have to divest. The main requirement is that you reinvest the money immediately into a diversified mutual fund.

So Tillerson, who was facing mandatory retirement early next year, has the ability to diversify his portfolio away from just owning one stock—Exxon—and defer as much as \$61 million in taxes. However, because of the way Exxon set up its compensation plan, the bulk of Tillerson's shares don't actually qualify for the government divestiture tax loophole. Worse still, Exxon, never set up a policy for what to do to when a top executive leaves for public office. The result is either Tillerson walks away from as much as \$190m in stock, or he keeps the giant windfall but ends up paying tens of millions in taxes immediately. Either way, Exxon faces big questions about the depth of its commitment to long-term thinking and its shareholders.

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