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Accountants & business advisers

Tax Insights

Online reporting for Employee Share Schemes

Shares and securities reporting is complex, not least due to the wide variety of circumstances that are deemed to be chargeable or reportable. So what are the rules regarding the registration, event reporting and online filing of Employment Related Securities returns with HMRC?

Annual Reporting of Employment Related Securities

Income tax and National Insurance Contributions can be due from employees or directors and their employers in relation to the acquisition, ownership or disposal of Employment-Related Securities (ERS).

Transactions in shares, options and other securities by employees and directors need to be reported by employers to HMRC online via annual ERS returns. Although the returns do not themselves collect any tax (this is done through PAYE or Self Assessment), they are a monitoring system that allows HMRC to potentially target further enquiries.

What is an Employment Related Security?

A security (for example: shares, debt, derivatives and interests in investment partnerships) will be an employment-related security when the right or opportunity to acquire the security (or an interest in security) is:

- Available because of employment of the person acquiring the security (or interest) or to another person (for example to the employee's spouse), or
- Available from a person's employer (or a person connected) except by an individual in the normal course of domestic, family or personal relationships. This excludes from the definition such things as gifts of shares between family members.

The term 'employment' includes a former, current and prospective employment.

Chargeable & Reportable Events

It is useful to understand the difference between what is actually chargeable to tax and what is merely reportable on the ERS return:

- A Chargeable Event is an occurrence that potentially gives rise to a tax charge. All Chargeable Events are also Reportable Events.
- A Reportable Event may not necessarily give rise to a tax charge, but it must still be reported to HMRC on an annual ERS return. This means that it can be necessary to report transactions that have no tax implications.

Deadline & Penalties

All annual ERS returns must be submitted online by 6 July after the end of the relevant tax year (5 April). Reminders and notices to file will not be issued by HMRC, and there are automatic penalties for late or inaccurate filing (starting with a £100 penalty for a late return, with additional increasing penalties if the return remains outstanding for more than 3 months). In addition, HMRC can impose penalties of up to £5,000 per return if the return contains inaccuracies.

In order to submit an annual return, you will first need to register your 'scheme' with HMRC's ERS service (which is an add-on to HMRC's existing PAYE online service). The definition of a 'scheme' is wide ranging and includes a one-off acquisition of shares by an employee.

Various types of return must be submitted for schemes registered on the ERS online service including:

- Enterprise Management Incentives (EMI)
- Share Incentive Plan (SIP)
- Save As You Earn scheme (SAYE)
- Company Share Option Plan (CSOP)
- 'Other' non-tax advantaged schemes or awards (previously reported on Form 42).

Once a scheme or arrangement has been registered on the service and remains live, employers have a continuing annual obligation to submit an end of year return online by the deadline, even if there were no transactions during the year.

What has to be reported?

The most common Reportable Events are the purchase and sale of shares by directors and employees (this may include shares being bought back from, or sold by, a founder shareholder) and the award and exercise of share options.

Whether a tax charge will arise is a separate issue and depends on the exact nature and circumstances of the transaction.

The following events will not normally need to be reported:

- Newly incorporated companies: allocation of initial subscriber and further shares
- Newly incorporated companies: shares acquired directly from the formation agents.
- Securities options (broadly, simple 'right to acquire' securities) are excluded from being employment-related securities. However, upon exercise (taking up) of the option (or various other subsequent Chargeable Events), income tax and National Insurance charges can arise on the difference between the market value of the securities received and any consideration given (and expenses incurred) by the employee or director for the option or upon exercise

The following events must be reported:

- A Chargeable Event in relation to restricted securities and restricted interests in securities
- A Chargeable Event in relation to convertible securities and interests in convertible securities
- An event which discharges a notional loan relating to securities or an interest in securities
- Doing anything that artificially enhances the market value of a security
- Disposal of securities and interests in securities for more than their market value

Tax Advantaged Schemes

EMI, SIP, SAYE and CSOP schemes all receive some form of tax advantage compared with other types of security schemes. Whilst pre-approval of schemes by HMRC is no longer required (employers now self-certify), further in-year reporting (in addition to the annual ERS return) may also be required to retain any tax advantage. Any such extra reporting requirements may be time sensitive – for example HMRC must be informed of any grants of an EMI option within 92 days of the date of the grant, or any tax benefits for the employer and employee are at risk.

How we can help

Shares and securities reporting is complex and can be confusing for employers, not least due to the wide variety of circumstances that are deemed to be chargeable or reportable. Due to the potential penalties for late or incorrect ERS returns, we strongly recommend that you seek advice at the earliest opportunity when planning and carrying out Employment Related Securities transactions.

For further information or to arrange a meeting with our expert team today, please contact:

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