EMPLOYMENT-RELATED SECURITIES

Annual reporting – 6 July 2023 deadline for the 2022/23 tax year

Employers may have a requirement to file one or more employment-related securities (ERS) annual returns by 6 July 2023 in connection with certain employee share schemes and other arrangements during the 2022/23 tax year.

When is a return required?

Broadly, where employees or directors, including non-executive directors and UK participants of overseas plans, are involved in transactions involving shares, options, or other securities, this will need to be considered for reporting.

The transactions do not need to be part of a formal share plan to potentially be reportable and can instead be one-off events. Reporting may also be required regardless of where the issuing company is resident or incorporated.

In particular, returns will be required where a company operates any of the following tax-advantaged employee share plans.

- Enterprise Management Incentives (EMI).
- Company Share Option Plan (CSOP).
- Share Incentive Plan (SIP).
- Save As You Earn (SAYE).

In addition, a separate return (known as an 'Other' return, formerly Form 42) may need to be filed to report other ERS arrangements outside of the HMRC plans listed above, such as (but not limited to):

- non-tax advantaged share options;
- the acquisition, conversion or disposal of shares or other securities such as loan stock or carried interest;
- the lifting of restrictions attached to securities;
- restricted stock units (RSUs) and restricted stock awards (RSAs);
- the variation of rights attached to securities;
- acquisition of profit units or carried interest arrangements; or
- certain corporate transaction and group re-organisations.

If you are unsure, our specialist team can assist with identifying whether a return is required.

What needs to happen?

1. Reportable transactions during the year to 5 April 2023 need to be identified.
2. ERS arrangements need to be registered online via HMRC’s ERS online service, if not already done so. It is important that the correct plan type is opened and in respect of the relevant year(s) of activity. Agents are not able to do this on the company’s behalf however we can provide guidance.
3. ERS annual returns prepared and filed online by 6 July 2023 for each open scheme. Where returns are filed on your behalf, the agent will need to register with HMRC in order to do so. This registration process can take a few weeks to complete.

Any arrangements registered online will require annual returns to be filed for subsequent tax years, irrespective of whether there have been any reportable events in those future tax years, unless the plan has been formally closed by entering a ‘date of final event’ on HMRC’s online gateway.

Automatic late filing penalties will be charged where returns are filed after 6 July. A £100 automatic penalty is levied where the deadline is missed and this penalty increases over time for late filings. HMRC may also charge penalties where returns contain inaccurate information.

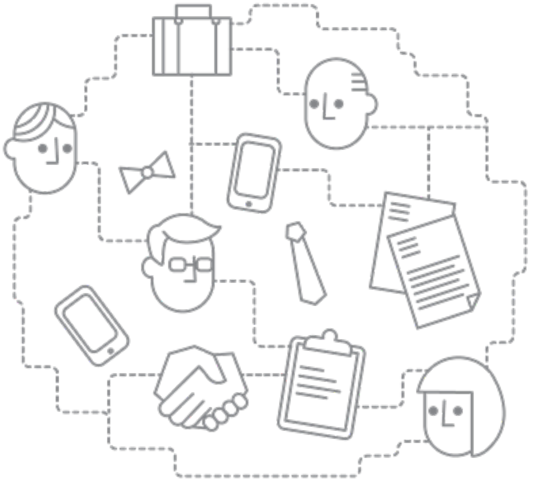
Please see the attached appendix for further issues to consider that may not directly relate to ERS annual returns, but which we find are commonly raised with clients as part of the ERS annual compliance process.

How can RSM help?

The concept of ERS and the associated reporting requirements are broad and can be complex.

RSM has a specialist team that can advise on whether you have any ERS reporting requirements, prepare and submit ERS returns on your behalf and help put systems in place to monitor transactions going forward.

In addition, some of the events being reported can give rise to numerous tax issues for both the company and your employees. RSM can advise on any tax charges arising in connection with ERS along with any associated structuring opportunities.



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APPENDIX

Further points to consider

HMRC tax-advantage schemes

- From April 2023, the availability and generosity of CSOP schemes will be expanded. The limit on the value of CSOP options granted to an employee (measured at the date of grant) will double to £60,000 and the restrictions on classes of share that can qualify have been eased. This is particularly beneficial for those companies which do not qualify for EMI or are likely to cease to qualify, and also means companies with CSOP schemes can offer larger awards to employees.
- Failure to register a CSOP, SIP or SAYE scheme online by 6 July following the tax year in which the first awards were granted will result in any awards granted in that previous tax year not qualifying in full for the associated tax reliefs.
- If you operate an EMI scheme, consider the following.
    - Have all EMI option grants been notified within 92 days from grant, including 'rolled over' options? Is there a record of the submission?
    - Has your EMI scheme been in place for 10 years? Tax reliefs for qualifying options cease after 10 years following grant.
- When was the last time you undertook a review of the scheme to ensure it is aligned with current legislation, best practice and your commercial objectives?
- Do the company and participants still meet the qualifying conditions and have there been any disqualifying events since the grant of the awards?

Common issues

- The ERS reporting requirements extend beyond shares to cover other forms of securities defined by the legislation, such as loan notes and units in collective investment schemes.
- Share for share exchanges, bonus issues and rights issues involving employees frequently create an ERS reporting requirement.
- If the company operates an employee benefit trust or other trust arrangement – have all necessary filing and registration obligations been completed? Trust registration requirements have broadened as of 1 September 2022.
- It can be complex and time consuming to accurately track and manage awards made under employee equity plans. RSM can offer an equity plan management platform to help automate and reduce the administrative burden.

Business landscape and equity remuneration

- Have there been any changes to the business that could impact the operation of share incentives, for example a change in share values and trading environment?
- If the business is looking for ways to preserve cash but still incentivise employees, then using equity-based remuneration could be a solution. Arrangements can be flexible, tax-efficient and cost-effective.
- For any existing plans, are performance or vesting conditions still appropriate given the current business outlook? If not, is it possible to amend them, taking into account the potential tax pitfalls and any internal governance?
- HMRC are reviewing the use of discretion clauses in certain tax advantaged plans (eg EMI). Have you considered whether this impacts upon your existing plan rules?