



Employee owned shares: act now

To register share plans and other arrangements, self-certify qualifying schemes and submit annual returns by the deadline of 6 July, companies need to act now.

Who needs to read this briefing?

All companies who operate employee share plans or whose employees or directors hold shares, share options or other "securities" in their employing group of companies, or who are thinking of so doing need to know about the ERS Service: HMRC's online registration and reporting tool for employment-related securities ("ERS") schemes.

New rules governing registration and reporting, which were introduced from tax year 2014-15 onward, apply to all types of employee share-based incentive, including one-off purchases of shares by directors for example, not just those which are tax advantaged, and require employers to provide information via the ERS Service within strict deadlines.

Why is this message important?

If you get this wrong or fail to register in time there are automatic penalties. For the qualifying (formerly known as "approved") tax efficient share schemes the tax advantages will be lost. So if you haven't yet registered your plan online, it is important that you do so by the deadline of 6 July 2015 for the 2014/15 tax year. The process can take 1 – 2 weeks, so start now.

Registration of arrangements

- All tax-advantaged plans and arrangements enabling employees or officers of the company to acquire shares, share options or other securities must be registered online in order to obtain a reference number specific to the arrangement, which is then used to submit annual returns.
- Non-tax-advantaged plans need not be registered until a reportable event, for example a share purchase or disposal, occurs. However, it is recommended that companies register all such arrangements in order to reduce the risk of schemes being overlooked in future years.
- Companies can choose to register all non-tax-advantaged arrangements under a single number (with one "plan name") so that only one annual return needs to be submitted.

- Tax advantaged plans must be registered or tax advantages will be lost. For Save As You Earn ("SAYE"), the Share Incentive Plan ("SIP") or Enterprise Management Incentive ("EMI") this will apply to future awards, **but if an existing Company Share Option Plan ("CSOP") is not registered by 6 July then all existing options will also lose their qualifying status and will become subject to income tax on exercise!**
- Once a scheme has been registered, even where no reportable event has occurred, a nil return must be filed in order to avoid a penalty.
- Annual returns are no longer accepted in paper form and must instead be submitted online via the ERS Service, which is part of the PAYE online system, using the reference number obtained at registration. Where companies are not already registered for PAYE online they will need to apply. **Activation can take some time, so as mentioned above action should be taken well in advance of the deadlines.**
- If arrangements are not registered in time, the company will not be able to submit its annual return and penalties will be charged (see below).

Self-certifications and declarations

- Whereas prior to 6 April 2014, companies could rely on HMRC advance 'approval' for comfort that certain schemes complied with legislative requirements to receive tax advantages, now companies will need to 'self-certify' and declare to HMRC that their plan meets all the relevant requirements. This declaration is made as part of the registration process and applies to SIPs, CSOPs and SAYE schemes, but not to EMIs which, although they must be registered, do not need to be self-certified.
- Notifications of grants of EMI options must contain a declaration that the employer has retained a declaration signed by the option-holder that he/she satisfies the necessary working time requirement. HMRC may ask to inspect this declaration. The employer must also provide a copy to the option holder within seven days of him or her signing it and should keep a record to evidence this.

Annual returns

Companies also need to provide an annual return setting out details of certain events occurring in connection with employment-related securities during the tax year. This includes the acquisition of shares or other securities (eg loan notes); grant, exercise or lapse of securities options; the lifting, variation or expiration of restrictions; conversion of certain securities, etc.

In a number of instances new information is required in addition to that which might previously have been reported. We therefore recommend the use of HMRC published templates to set out the information you are reporting.

Deadlines

HMRC has made clear that it will be enforcing the following deadlines strictly.

- All schemes approved before 6 April 2014 under the old regime must be registered by **6 July 2015**.
- New schemes introduced on or after 6 April 2014 must be registered by **6 July** following the tax year in which the first award of shares was made.
- The annual return must be completed by **6 July** following the relevant tax year.
- A grant of EMI options must be notified within **92 days of the date of grant** in order for the options to be qualifying options.

If a company or person has made all reasonable efforts to submit a registration or notification but has been prevented from doing so by an unforeseen or unusual event, they may make a “reasonable excuse” claim in writing to HMRC. If HMRC believes that the excuse is reasonable, they may waive any applicable penalty. Reasonable excuses include hospitalisation of the person responsible for filing the registration, fire, and service issues with the online service.

Incorrectly registered schemes – what if you get it wrong?

If a scheme is registered under the wrong scheme type or the same scheme is registered more than once, there is currently no simple way to rectify the mistake.

- If a scheme has been registered as the wrong type

(for example, as a CSOP instead of a SAYE), a second registration should be made under the correct scheme type.

- Companies should complete an annual return for each scheme that they have registered, including those registered incorrectly or double registered. The incorrectly registered scheme should be reported as ceased and a nil return made.

Penalties and enforcement

- Automatic fines apply as soon as a return, which HMRC expected to receive, is overdue. It is also expected that HMRC will apply other penalties as part of PAYE audits, so keeping records of compliance will be increasingly important.
- HMRC may enquire into a self-certified plan to ensure that it complies with the relevant legislation. If they find a serious failure to meet the requirements, the scheme will cease to be a “qualifying” scheme from a date specified by HMRC. For SIP and SAYE schemes, tax relief for the holders of awards made before that date is retained. However, for CSOP schemes, tax advantages are lost from the outset. The company may also be liable for a penalty of up to twice the income tax and NICs that would have been paid if the scheme had always been non tax-advantaged.
- In certain circumstances, declarations of ongoing compliance are also required.

Summary of consequences for non-compliance

Breach	Penalty
Return filed late	Immediate £100 fixed fee, further £300 penalties if still outstanding 3 months after deadline, and 6 months after deadline – automatically applied
Return outstanding more than 9 months after deadline	£10 per day – at HMRC's discretion
Material inaccuracy in an annual return which is 'careless or deliberate and not amended without delay'	Up to £5,000 – at HMRC's discretion
Failure to self-certify by deadline – CSOP, SIP, SAYE schemes approved before 6 April 2014	Tax advantages will not apply to any awards or exercises made after 6 April 2014 in relation to SIP or SAYE schemes or outstanding CSOP options, regardless of when these were granted.
Failure to self-certify by deadline – New schemes from 6 April 2014	Loss of tax advantages
Failure to complete online notification of Enterprise Management Incentive options within 92 days of grant	Loss of tax advantages
Failure to provide the option holder's working time commitment declaration to HMRC within 7 days of HMRC request; or to the option-holder within 7 days of signature	£500 – at HMRC's discretion
Plan self-certified incorrectly	Up to twice the income tax and national insurance contributions which HMRC assess would have been payable as a non-tax-advantaged scheme

Summary

The potential for loss of tax advantages and, in some cases, large fines for failure to accurately and punctually self-certify, register and report on CSOP, EMI, SAYE, SIP and non-tax-advantaged ERS schemes means that companies should ensure that they understand and comply with the requirements of the reporting regime, register schemes in plenty of time and seek advice as soon as possible over any areas of uncertainty.

Contacts

If you would like more information, please get in touch with your usual contact or with:



Caroline Harwood
Director, Incentives

+44 (0)117 307 6005
caroline.harwood@burges-salmon.com



Paula Hargaden
Senior Associate, Incentives

+44 (0)117 307 6981
paula.hargaden@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a limited liability partnership registered in England and Wales (LLP number OC307212), and is authorised and regulated by the Solicitors Regulation Authority. It is also regulated by the Law Society of Scotland. Its registered office is at One Glass Wharf, Bristol BS2 0ZX. A list of the members may be inspected at its registered office. Further information about Burges Salmon entities, including details of their regulators, is set out in the 'Who we are' section of the Burges Salmon website at www.burges-salmon.com.

© Burges Salmon LLP 2015. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.