

Employee share plans: Action required! The new online regime

All companies who operate employee share plans, or whose employees or directors hold shares, share options or other “securities” in connection with their employment, or who are thinking of so doing need to know about the new online registration and reporting regime.

Companies must take action in respect of this tax year 2014-15 to comply with a number of new obligations, avoid penalties and minimise the risk of a loss of significant tax reliefs.

The new obligations apply to all types of employee share-based incentive, not just those which are tax advantaged, although the changes to formerly ‘HMRC approved’ plans are the most fundamental.

You will find more detail below:

Why all arrangements need to be registered

- All plans and other arrangements enabling employees or officers of the company to acquire shares, share options or other securities must be registered online to obtain a **reference number** specific to the arrangement so they can submit annual returns from this tax year. Returns will not be accepted in paper form going forwards and instead will need to be submitted online via HMRC’s new “ERS online” system which is part of the PAYE online system. Where companies are not already registered for PAYE online they will need to do so. Activation can take weeks and so action should be taken well in advance of the deadlines. Any acknowledgement reference issued in response to a registration application is **not the scheme registration number**. This will be provided separately to the Company, which must check its online filing inbox for details.
- If the arrangement is not registered in time then the company will not be able to submit its annual return and **penalties will be charged** (see below).
- Companies may want to register all non tax advantaged arrangements as one so that only one annual return needs to be submitted to minimise exposure to penalties.

- The issues for tax-advantaged schemes are more significant. Prior to 6 April 2014, companies could rely on HMRC advance ‘approval’ for comfort that certain schemes (namely the Company Share Option Plan (CSOP), the Share Incentive Plan (SIP) and the SAYE/ShareSave plan) complied with legislative requirements to receive tax advantages. This will change: from 6 April 2014 onwards companies will need to ‘self-certify’ and declare to HMRC that the plan meets all the relevant requirements of the legislation. Compliance will be enforced by HMRC opening an enquiry into a plan which can result in harsh penalties.
- In addition to penalties, CSOP, SIP, SAYE and Enterprise Management Incentive options risk **losing their tax advantages** if they are not registered, Self-Certified and the returns submitted online within the necessary deadlines. It appears that HMRC are unlikely to take a “light touch” in this regard.

The deadline

- All arrangements that existed prior to 6 April 2014 and any established during this tax year must be registered and, where relevant, self-certified before 6 July 2015. Going forward new arrangements must be registered (and if necessary self-certified) by 6 July following the end of the tax year in which the first awards were made. Given that it may take some weeks for a registration to be activated, it is recommended that you start the registration process well in advance of the deadline so that you have time to file your annual returns.

Annual returns

- For tax years up to and including 2013-14 annual returns must be sent to HMRC in hard copy only.
- From tax year 2014/15 all annual returns must be filed online against the **reference number** obtained from registration. As in previous years, information about grants and exercises, and other relevant information, must be included. Templates are available.

Changes to Enterprise Management Incentives (EMI) options

- EMI plans need to be registered because EMI options granted on or after 6 April 2014 must be notified online and from tax year 2014/15 onwards annual returns must be filed online. Companies should ensure that their EMI schemes are registered with HMRC in plenty of time for the relevant filing and notification deadlines.
- Where EMI options are granted from 6 April 2014 onwards, the notification must contain a declaration that the employer has retained a declaration signed by the option holder that he/she meets the necessary working time requirements. 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.
- **Tax advantages will be lost if an EMI option grant is not notified correctly.** Penalties may apply if the option holder declaration is not produced to HMRC or provided to the option holder within the specified time limits.

Penalties and enforcement

- We are expecting automatic fines to apply as soon as a return, which HMRC expected to receive has not arrived. We expect HMRC to apply other penalties as part of PAYE audits and so keeping records of compliance will be increasingly important.

- Since HMRC no longer approve that CSOPs, SIPs and SAYE plans (Self-Certified Plans) comply with the legislation, they may enquire into a Self-Certified Plan in various circumstances. If they find a serious failure to meet the requirements of the legislation, 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 should be 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. Therefore it is important to take professional advice as to whether you can self-certify your plan.
- In certain circumstances, declarations of ongoing compliance are also required.

Summary

The new ERS compliance regime represents a major change from previous practice. However, companies will get used to the new process and in some cases it will represent a simplification of current systems.

However, while to date penalties have seldom been charged for non-compliance, we cannot expect this to continue. The potential for loss of tax advantages under CSOP, SIP, SAYE and EMI represents a significant risk for many employers, meaning that this change in the HMRC rulebook needs to be given due attention.

Summary of consequences for non-compliance

Return filed late	£100 fixed fee, then further £300 after 3 months, further £300 after 6 months - automatic
Return outstanding more than 9 months after filing date	£10 per day - discretionary
Material inaccuracy for annual return which is ‘careless or deliberate and not amended without delay’	Up to £5,000 - discretionary
Failure to self-certify by deadline?	SIP / SAYE: Awards made on or before 5 April 2014 will keep tax advantages. Awards made from 6 April 2014 will lose tax advantages. CSOP: all subsisting options whether granted before or after 5 April 2014 will lose favourable tax treatment.
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 in copy form within 7 days of signature.	£500 - discretionary
Penalty as an outcome of an HMRC enquiry into Self-Certified plans	Up to twice the income tax and national insurance contributions which HMRC assess would have been payable

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