Briefing

Incentives - Autumn update

November 2015

Online Registration and tax efficient plans in the news

In this update we discuss problems with online registration of employee share schemes, the outcome of HMRC research into growth shares and the increasing popularity of EMI option schemes.

Employment-Related Shares: Problems with Online Registration

Following on from our briefing in June HMRC in its "Employment-Related Securities Bulletin No. 21" has identified a variety of issues arising out of HMRC's new Online Registration process launched for the 2014/2015 tax year.

Companies who have used the online Employment Related Securities or **'ERS'** Service may need to review their submissions in order to avoid automatic fines and penalties. The ERS service would have been used by Companies to submit annual returns for an employee share scheme, to report various events relating to shares or other securities held by officers or employees or to notify the grant of Enterprise Management Incentive (**'EMI'**) options.

In particular:

- where a share scheme was registered by mistake;
- where the registration for a share scheme was accidentally duplicated; and/or
- where HMRC has written requesting that an annual return for 2014/15 is re-submitted;

companies will need to take action.

Share Schemes Registered by mistake and duplicate registrations

HMRC has identified a large number of schemes where returns have not been submitted. It is likely that these were the result of accidental or duplicate registrations. In these circumstances, the company will need to file a blank return as shown in the flow chart below:-

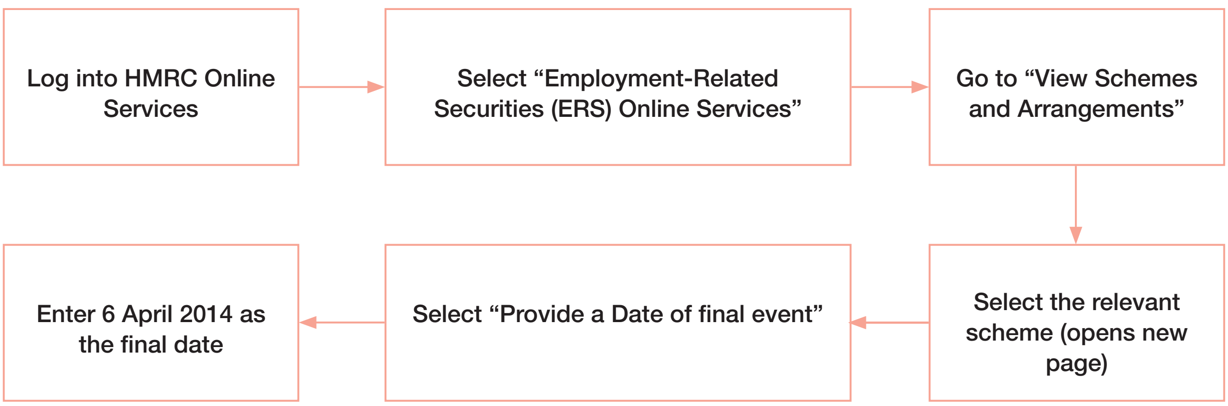
If you suspect, but are not certain that your company has registered in error, then you can check by completing the first three steps of the process.

HMRC has not specified any particular time frame for cancelling an incorrectly registered scheme and have not commented on their approach to penalties for late submission, even in cases of mistake but the sooner any errors are notified the better.

Re-Submission of Annual Returns for 2014/15 by 1 January 2016

HMRC has also identified that the ERS Service did not correctly record all the data submitted by certain companies and is contacting the relevant companies by letter addressed to the company secretary requesting that they re-submit their returns. The letters will state the affected share scheme giving its name and "unique identifier." If you have not received a letter from HMRC then it considers than the return has been processed correctly.

Filing a blank return



continued overleaf

Each affected return requires an individual ‘re-submission’. The process for re-submitting a return is similar to that for closing a registration in error as shown above. You should follow the steps until you have selected the relevant scheme and then select ‘submit annual return’ for 2014/15.

Those affected are required to re-submit their returns “as soon as possible” with 1 January 2016 acting as a final deadline. HMRC may impose penalties if you fail to comply by then.

Growth Shares – HMRC research

HMRC recently published the findings of research it commissioned into the use of Growth Shares as part of employee remuneration structures. “Employment-Related Securities, Research Report 372” summarises the conclusions of interviews with a number of professional advisers (lawyers, accountants, tax advisors) who advise on growth shares as well as employers who offer growth shares to key employees.

Key findings identified in the report are that growth shares:

- help companies to recruit, retain and incentivise employees;
- encourage attitudes and behaviours that bring about high levels of growth; and
- offer attractive tax advantages.

Growth shares are designed to enable employees participate in the future growth in value of their employing company and may be structured to increase in value if certain commercial targets are met. When implemented successfully they offer a low initial subscription cost (or tax charge), together with capital gains tax treatment for any increase in value. They can protect the investment of shareholders as existing value may be ring-fenced, and can be created as non-voting and/or non-dividend bearing shares, further protecting shareholders’ interests.

The report found that advisers felt the key driver of the use by employers of growth shares was to attain their growth strategy and that growth shares played a valuable role in developing SMEs. This supports our own findings in practice where our clients have found growth shares to be particularly effective incentive arrangements when structured and communicated appropriately. If you would like to know more or would like any assistance with the implementation of a growth share plan please contact one of our incentives team or your usual Burges Salmon contact.

Enterprise Management Incentive option schemes more popular than ever

Each year HMRC publishes statistics on the four tax-advantaged schemes, Share Incentive Plan, Save As You Earn/Sharesave plans, Company Share Option Plans and the EMI scheme. The statistics for 2013-14 show an increase in the number of companies granting options under EMI schemes and an increase in the total value of grants under those schemes. EMI schemes are very flexible option schemes providing tax advantages to employees and companies. Our previous briefing on EMI Schemes contains further information can can be found here.

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