CHARTERED ACCOUNTANTS

Reporting Employment-Related Securities and Options to HMRC

Companies have an obligation to report to HMRC certain transactions involving shares, securities and options, each tax year on an online Employment Related Securities' (ERS) Return.

In most cases, any share transactions involving employees are reportable.

The most common reportable transaction will be the issue or exercise of shares or share options to a director or employee. This does not just apply to current directors and employees, but also to those who have been directors or employees in the past or who may become so in the future.

If you have any reportable transactions, an ERS Return for the year to 5 April 2021 must be filed with HMRC by **6 July 2021**.

If an ERS Return submission was submitted for 2019/20, a report will automatically be required for 2020/21. If no return was either made or required in 2019/20, it will not be necessary to complete a return for 2020/21 unless there are any transactions to report.

Failure to make a report on an ERS Return can result in a penalty of £300 per reportable transaction plus daily penalties of £60; it can also affect your risk rating with HMRC.

Transactions reportable on an ERS Return include:

Options
- Grant of securities options
- Acquisition of securities in connection with (including exercise of) securities options
- Assignment and release of securities options

Acquisition of securities
- Unrestricted securities
- Securities with an artificially reduced market value
- Restricted securities with or without a forfeiture restriction

Events occurring after the acquisition of securities
- Variation or lifting of restrictions on securities
- Conversion of securities
- Discharge of notional loans
- Receipt of other benefits from securities
- Securities sold for more than market value
- Artificial enhancement or reduction of market value

Companies incorporated in the year to 5 April 2021:

Where a company is incorporated in the UK and initial subscriber shares (also called founder shares) are acquired a report is not required if all the following conditions are met:

- the shares are acquired either directly on incorporation, by transfer from a company formation agent, or from another person forming the company, e.g. a solicitor or accountant;
- all the initial subscriber shares (and no form of security other than shares), are acquired at nominal value;
- the shares are not acquired by reason of or in connection with another employment;
- the shares are acquired by a person who is a director or prospective director of the company, or someone who has a personal family relationship with the director and the right or opportunity is made available in the normal course of the domestic, family or personal relationship of that person.

Information

This means that most newly incorporated companies will not need to complete an ERS Return in respect of the founder shares, although there may be additional transactions which do need to be reported.

Other transactions where reports may not be required include:

- Transfers of shares in the normal course of domestic, family or personal relationships
- Flat Management Companies
- Members' clubs (formed as companies)

Tax advantaged schemes:

For tax advantaged schemes, an online ERS Return will still need to be submitted in all the following cases even if there have been no reportable events in the year:

- Save As You Earn schemes (SAYE) – previously on paper Form 34
- Company Share Option Plans (CSOPs) – previously on paper Form 35
- Approved Share Incentive Plans (SIP) – previously on paper Form 39
- Enterprise Management Incentives (EMI) – previously on paper Form 40

Online Filing

ERS Returns for 2020/21 must be filed electronically using the PAYE online service. For companies which are not already registered, the process takes time because of the need for HMRC to post out activation codes, so early attention to this is vital.

If you are in any doubt as to whether transactions need to be reported, then please contact your normal Ensors contact for advice, or email ers@ensors.co.uk.

Self-certification for new and existing share schemes

HMRC no longer provides formal 'approval' for any new share scheme arrangements. All new and existing arrangements must register online, and 'self-certify' that they meet the necessary requirements.

This affects:

- **Enterprise Management Incentives (EMI)**
- **Company Share Option Plans (CSOP)**
- **Save As You Earn option schemes (SAYE)**
- **Any non-tax advantaged arrangements**

Details are on the HMRC website: https://www.gov.uk/guidance/self-certify-your-tax-advantaged-employment-related-securities

Please contact Ensors for further advice or information