# Hurdles encountered

Employment Tax

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*Sue El Hachmi* and *Mairi Granville-George* provide an update on the HMRC ERS Service

### Key Points

### What is the issue?

How are companies dealing with HMRC's online registration and digital filing requirements for employee share plans?

### What does it mean to me?

Advisers should be aware of the practical issues commonly encountered by companies using the ERS Service.

### What can I take away?

Companies are recommended to take screenshots or printouts of key data uploaded and confirmations received.

Online registration, self-certification and digital reporting of employee share plans was introduced by HMRC on 6 April 2014, with the introduction of the Employment Related Securities (ERS) Online Service. Now that companies have had two tax years to get to grips with the new online regime, we take a look at some of the practical issues companies and their advisers have encountered, together with some other changes to HMRC's services.

## How is the regime working for clients?

The ERS Service requires companies to register their employee share plans online with HMRC and to file share scheme annual returns online. It is also a requirement that the company secretary makes an annual online self-certification declaration in respect of any tax-advantaged arrangements.

These changes were introduced in response to recommendations made by the Office of Tax Simplification in its reviews of tax-advantaged and unapproved employee share schemes.

Although the initial IT glitches which caused headaches for some companies in the first year of operation of the new regime have been ironed out, in our experience a number of issues regularly arise.

### Registration

Each employee share plan and employment-related security arrangement operated by a company must be registered online with HMRC, including arrangements whereby directors and/or employees acquire shares by subscription or purchase (subject to certain exceptions for listed company shares purchased in the market).

Tax-advantaged and non-tax advantaged arrangements must be registered, although note that:

- it is not necessary to register non-tax advantaged schemes until there is a reportable event; and

- if several non-tax advantaged arrangements are operated it is possible for a company to group these together under one registration.

Many companies will be familiar with the registration process, as they would have registered their plans when the ERS Service was introduced in the 2014/15 tax year – however it is important for them and any companies adopting employee share plans for the first time to remember to register:

- any new plans or arrangements adopted during a tax year; and
- any non-tax advantaged schemes not previously registered where a reportable event has occurred during the tax year.

Plans must be registered by 6 July following the end of the relevant tax year – however registration should not be left until the last minute, as it can take approximately seven days to generate the unique scheme reference number which is needed to submit annual returns by the deadline of 6 July.

Note that agents cannot register plans on behalf of their clients – registration is the company's responsibility.

Companies should take care in completing the registration process, as once a plan has been registered it is not possible to simply delete it if mistakes have been made. If a plan is incorrectly registered then the company will need to log on to the ERS Service to close it (by providing a date of final event) and then submit an annual return, albeit a nil return, to fully close it.

## Self-certification of tax-advantaged plans

Gone are the days of prior formal HMRC approval of tax-advantaged plans – instead the company secretary must self-certify any company share option plans (CSOPs), savings related share option (SAYE) schemes and share incentive plans (SIPs) on an annual basis. The end of the prior HMRC approval process means that such plans can be implemented more quickly, however it is essential that thorough due diligence is carried out by advisers to ensure that the company and proposed participants qualify under the applicable Schedule to the Income Tax (Earnings and Pensions) Act 2003 and that the plan documentation meets the legislative requirements. Failure to satisfy the legislative requirements and make the appropriate self-certification declaration will result in the loss of tax relief for participants, so it is important that the declaration is considered, and completed, well in advance of the self-certification deadline each year.

## Annual returns – online filing

The old share plan paper returns have been replaced by online returns, which must be filed with HMRC by the company by 6 July following the end of the tax year. Agents may be appointed to file returns on behalf of the company, and many advisers have been assisting their clients with this process. Automatic penalties apply for late filing, so companies would be well advised to make appropriate diary reminders. The templates to be used are published on HMRC's ERS page each year, and have been modified by HMRC in response to customer feedback. There are different templates for each type of tax-advantaged plan and enterprise management incentive (EMI) options. The old Form 42 is now known as the 'Other' return for non tax-advantaged schemes and employment related security arrangements. Note that details of employee shareholder status ('ESS') shares should be included in the 'Other' return. At first glance this may seem slightly surprising, given that tax relief is available under such arrangements.

## Notification of the grant of EMI Options

A final practical point to flag on HMRC's online procedures relates to tax-advantaged EMI options. To qualify for tax relief under EMI, one of the important requirements is that the grant of the options must be notified to HMRC within 92 days of the date of grant. Historically, signed paper EMI 1 forms were submitted to HMRC by the company and HMRC issued written acknowledgement of the grant of EMI options. The introduction of the ERS Service moved the notification of EMI option grants online from 6 April 2014, and HMRC no longer issues a paper acknowledgement of receipt of notifications. HMRC has confirmed that companies should instead keep a detailed record of the EMI options notified by printing:

- the 'summary' and 'confirmation' pages of the details provided to HMRC by the company during the EMI option notification; and
- (once the notification has been successfully submitted) the company should print the acknowledgement page for its records.

This is important, not only for the ongoing administration of the EMI plan, but also in the event of any subsequent sale or due diligence process involving the company. A lack of evidence of timely EMI option notifications can create headaches for advisers and lead to detailed negotiations about the status of the options and whether withholding on account of tax is required.

## Withdrawal of informal valuation checks

On 1 February 2016, HMRC Shares & Assets Valuation (SAV) announced that it was withdrawing some of its informal valuation check services. The PAYE health check and ITEPA post-transaction valuation check (PTVC) services were withdrawn with effect from 31 March 2016. For more on this, see William Franklin's article 'The end of an era' in September 2016's issue of *Tax Adviser*.

For now, the valuation check services relating to tax-advantaged plans (including EMI and ESS arrangements) continue unaffected – it is to be hoped that these will continue to be offered by SAV in the future.

## NIC elections – still necessary?

There are further possible changes ahead for employee share plans as part of HMRC's digital strategy, in the area of NIC elections.

For option arrangements it is possible to transfer employer's secondary Class 1 NICs arising on exercise of options onto the option holder. There are currently two routes for the employer's NICs to be met by the option holder, by either:

- a NIC election; or
- a NIC agreement.

The option holder is entitled to relief from income tax for agreeing to meet the employer's NICs liability.

Earlier this year HMRC issued a consultation designed to gather views on whether there remains a need for NIC elections. It is clear from the consultation document that written NIC agreements are to remain.

The policy objective behind the consultation stems from HMRC reviewing paper-based processes. As the legislation requires NIC elections to be approved by HMRC (unlike NIC agreements), it is considering possible savings of HMRC resources. One advantage of the NIC election route is that the employer's NICs liability is legally transferred from the employer to the employee, creating certainty for the parties. In the consultation document, HMRC notes that the key aim is to determine whether current accounting rules mean that there is a case for retaining NIC elections. The Institute of Chartered Accountants in England and Wales has published its response to the consultation, which includes its representation that it as an organisation is ‘not aware of changes to accounting rules… that would obviate the need to continue to allow NIC elections’.

At the time of writing, we await publication by HMRC of the summary of responses to this consultation and confirmation of whether or not NIC elections are to remain.

For now, it is interesting that HMRC ran a consultation on whether there remains a need for NIC elections. Companies and advisers would have welcomed a consultation and the opportunity to comment on the withdrawal of the PAYE health check and ITEPA PTVC services, arguably more important and valued HMRC services which were withdrawn without prior consultation.

# Conclusions

The current theme for employee share plans is simplification and digitisation. Given its stretched resources HMRC is rightly continuing to review areas where procedures can be streamlined, but it is to be hoped that any future changes support and encourage the growth of employee share ownership in the UK.