



# SHARE FOCUS

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## **INTRODUCTION**

Welcome to the fourth edition of our newsletter, Share Focus. A lot has happened since the last issue back in March 2004. We can't cover everything here but hope we have covered some important topics that will be of interest to you.

## **GENERAL**

### **Online filing of Employee Share Schemes**

In November 2005 we announced, as part of a package of measures to reduce the burdens on business, the introduction of an online filing option available from 6 April 2007 enabling companies to report information currently provided on Forms 34 (SAYE), 35 (CSOP), 39 (SIP) and 42 (employment-related securities) about events occurring in the tax year 6 April 2006 to 5 April 2007 and future years. Regulations will be made shortly about the use of approved methods of electronic communications for the delivery of information.

Please note that to use this facility, users must be registered for the PAYE Online - Internet Service. For more information about this please visit our Online Services web pages at [www.hmrc.gov.uk/online/index.htm](http://www.hmrc.gov.uk/online/index.htm) ).

ESSU will no longer issue paper returns to companies. HMRC will instead issue notices to file share scheme annual returns to those companies whose schemes are known to us. However, please note that non-tax advantaged employment related securities events have to be reported without any prompting or notice from HMRC.

Companies will be encouraged to file online but they will still be able to file paper returns if they choose to do so. Companies can obtain paper copies of the annual returns by printing a copy from our website at [www.hmrc.gov.uk/shareschemes/ann-app-schemes.htm](http://www.hmrc.gov.uk/shareschemes/ann-app-schemes.htm).

Companies will use 3<sup>rd</sup> party software to submit share scheme information online. More details can be found at <http://www.hmrc.gov.uk/ebu/ess-online.htm>.

## Information for Software Developers

A technical pack 'Employee Share Schemes Online: 2006-2007 Internet Service' has been published for Software Developers and can be found at <http://www.hmrc.gov.uk/ebu/ess-techpack.htm> .

For further information on the development and availability of e-filing you can contact the SDS team at [sdsteam@hmrc.gsi.gov.uk](mailto:sdsteam@hmrc.gsi.gov.uk) or telephone 01274 534666.

## Annual return forms

The tax advantaged ("approved") scheme returns and the form for providing information of reportable events in relation to employment-related securities (Form 42) for the year to 5 April 2007 are now available on our [website](#) together with updated guidance to help with completion of Form 42.

## Employer CD-ROM

The 2007 version of the Employer CD-ROM will also contain an electronic version of Form 42 with detailed interactive guidance on its completion as well as a pdf version of the form available to download.

## Manual completion of returns

Companies can still send ESSU a completed paper copy of the annual returns by printing a copy of the form from HMRC's website at [www.hmrc.gov.uk/shareschemes/ann-app-schemes.htm](http://www.hmrc.gov.uk/shareschemes/ann-app-schemes.htm).

**Companies that do not file on-line or do not have internet access should contact ESSU.**

The completed forms must be returned to ESSU before **7 July 2007**. If companies have difficulty in completing their forms, or want to discuss how they can meet their statutory obligations, they can contact us at

**Compliance Manager  
Employee Shares and Securities Unit  
Room G52  
100 Parliament Street  
London  
SW1A 2BQ**

## EMI Return

Form EMI 40 for reporting Enterprise Management Incentives (EMI) options will continue to be issued by the Small Company Enterprise Centre (SCEC).

## Code of Practice 10 (CoP10) applications

If you are uncertain about HMRC's interpretation of the law (including its application to a proposed transaction) we will advise you, under the CoP10 procedure, if your query is in the following categories:

- the interpretation of legislation passed in the last four Finance Acts
- the application of double taxation agreements
- whether someone is employed or self employed
- Statements of Practice and extra-statutory concessions
- other areas concerning matters of major public interest in an industry or in the financial sector.

However, we will not help with tax planning, or advise on transactions designed to avoid or reduce the tax charge, which might otherwise be expected to arise. And your query must arise from genuine uncertainty about the meaning of the law.

Please send any COP10 applications about employment-related securities to ESSU at the address shown [here](#), headed, '*COP10 application*'. Please **do not** send the application to a named individual on the team unless it is in response to an outstanding query or one that has already been submitted and for which you already have a contact name.

You can find out more about [Code of Practice 10](#) on our website. In particular, please look at Appendix 1 for the list of information to be provided as part of a COP10 application.

## Technical enquiries

As with the COP10 applications, can you please send all technical queries to our contact address shown [here](#).

## **TECHNICAL ISSUES**

### *Tax advantaged (“Approved”) schemes*

#### **Variations to share capital, amendments to scheme rules and changes in participating companies**

Approved share scheme returns request information in respect of variations to share capital, amendments to scheme rules and changes in participating companies. As these transactions generally require prior HMRC approval, if the scheme is to maintain its approved status, ESSU will usually have been provided with this information. Where ESSU have previously been advised of such changes we will not regard a return as incomplete in the absence of such information in the return. If such changes have not been received prior to HMRC approval then details must be included in the return otherwise the scheme may lose its approval.

### *Non-tax advantaged (“Unapproved”) schemes*

The requirement in Form 42 to provide details of participating companies (Section 4 of the form) has not changed and details of all companies to whom the return applies must still be given.

#### **Age discrimination - The Employment Equality (Age) Regulations 2006**

We have been considering the effect of The Employment Equality (Age) Regulations 2006 (“the Regulations”) which came into effect on 1 October 2006 on approved employee share schemes and this article is to advise you of our understanding of the position in relation to approved share schemes.

Firstly it is our view that existing schemes do not need to be amended to reflect the “Regulations” in order to continue to be approved by HMRC. It is for companies and their advisers to decide whether or not their own schemes should be changed, and if so what amendments may need to be made in order to conform with the requirements in the Regulations.

In making any amendments to schemes our view is that they should not be drafted so as to take away from present or future participants any rights to which they are, or will become entitled under the scheme as a consequence of the operation of the United Kingdom’s statutory provisions. In this situation we would expect to see a “levelling up” approach where the amendments are made to the participants benefit. This will apply unless all those who may be affected by the change have given their consent to the amendment.

Amendments that are designed to give effect to, and make the scheme compliant with, the Regulations will generally be acceptable and may apply to new as well as existing options or share awards.

Specifically:

- a) The tax legislation for Save As You Earn (SAYE) specifies an age range for retirement age and it is for companies to choose the appropriate age. For the Share Incentive Plan the specified age must not be less than 50 years and it is again for companies to choose the appropriate age provided it is not less than 50 years. To qualify for tax relief on retirement in a Company Share Option Plan (CSOP) the scheme rules (including where appropriate ancillary documents to the scheme rules) must specify an age not less than 55 years. It is for the company to choose the appropriate age provided it is not less than 55 years.

There appears to be some confusion over the inclusion of a specified age in CSOP but just to make it clear, if an age (which must be not less than 55 years) is not specified in the scheme rules then if a participant retires tax relief will not be due on exercise following retirement.

- b) Companies may make retrospective changes to the specified age in SIPs, CSOPs and SAYE schemes where companies are of the view that this is required to meet the terms of the Regulations.
- c) If companies wish to amend their SAYE schemes to provide for a definition of “bound to retire” this is a matter for them and their advisers. HMRC does not require companies to provide a definition.
- d) All amendments to plans will require prior HMRC approval as they are considered to be changes to key features of the plans.

### **Share Incentive Plan –Civil Partnership regulation - minor update**

The SIP rules require all partnership share agreements to contain a prescribed form of notice that explains to the SIP participant the impact on their benefit entitlement of purchasing partnership shares. The prescribed form of notice is defined in Employee Share Ownership Plans (Partnership Shares – Notice of Effects on [Benefits, Statutory Sick Pay and Statutory Maternity Pay](#)) Regulations [2000 SI2000/2090](#). Following the coming into force of the Civil Partnership Act 2004 the prescribed form of notice has been amended by [The Civil Partnership \(Employee Share Ownership Plans\) Order 2007 SI2007/0109](#). The amendment replaces the reference to “wife or husband” with “spouse or civil partner” in the prescribed form of notice and comes into effect on 13 February 2007.

Any Notices issued with a Partnership Share Agreement from the 13 February 2007 must show the new wording. No action is required on Notices already prepared and issued to SIP participants.

In addition, the Notice also refers to Inland Revenue and Department of Social Security. These departments have changed their names to HM Revenue & Customs and Department of Works and Pensions respectively. Any Notices issued with a Partnership Share Agreement from 13 February 2007 must show the new wording. No action is required on Notices already prepared and issued to SIP participants.

### **Unapproved options – Foreign Exchange Conversion**

The issue concerns whether the exercise price, denominated in a foreign currency, is converted into sterling at date of grant or date of exercise. There are two elements concerning

- the application of approved scheme limits, and
- the computation of any unapproved gain under sections 478, 479 and 480 in Chapter 5 Part 7,

which appear to have become conflated.

#### *Approved Scheme Limits*

The limit on, say, CSOPS, is £30,000 sterling at date of grant. Even if the exchange rate later moves so that the limit is exceeded, this is no different to the share price moving. The shares subject to the option can increase in sterling value caused by market fluctuations or exchange rate fluctuations, but this has no effect on the options remaining qualifying.

#### *Computation of Chapter 5 Gain*

The charge in S479 is based on the formula  $MV - C$ , where MV is the market value of shares obtained at the time they are acquired on exercise and C is the consideration (exercise price) given for the securities acquired. Per S478, DA is then deducted as set out in S480. DA will include anything given for the grant of the option.

*Example*

To illustrate with an example -

- Year 1** Employee pays \$100 for grant of market value option for 1,000 shares @ \$2 each. The exchange rate is £1 = \$1.50
- Year 3** Employee exercises option by paying exercise price of \$2,000 and obtaining shares worth \$5,000. The exchange rate is £1 = \$2

To summarise statute, the formula becomes: MV - C - DA

	Dollar price	Rate of Exchange	Computation in Sterling
MV at exercise	\$5,000	(£1 = \$2)	£2,500
C exercise price	\$2,000	(£1 = \$2)	less £1,000
DA cost of option	\$100	(£1 = \$1.50)	less £67
Gain on exercise			<b>£1,433</b>

The gain should not be computed in dollars and the result converted into sterling; neither should the exercise price be converted at the date of grant – that figure is not what is paid to acquire the shares (but see below if employer “fixes” exchange rate).

*If employer “fixes” exchange rate*

In all cases the option certificate/company records should be checked to understand how the company has handled the grant. For example it may be that the company has “fixed” the exchange rate at the date of grant by granting an option over say 5,000 shares at \$2 per share (when £:\$ rate is £1:\$2) and advising the employee that all they will pay on exercise is £2,500. In effect, the company has granted the option in sterling.

**COMMUNICATIONS****Acknowledging correspondence**

We have been looking at our approvals process and in particular the acknowledgement of draft scheme documents submitted for review/informal approval received by the team. We aim to comment on draft scheme documents submitted within 28 days of receipt but as we generally reply to such correspondence within 14 days we have decided that the issue of a letter acknowledging receipt, followed a few days later by a substantive reply, is not necessary. This change will be effective from 1 April 2007.

## Comings and goings

Since the last issue in March 2004 there have been a number of staff changes on the team.

Colin Gibson succeeded Janice Cross as Head of the Unit. He also heads HMRC Shares and Assets Valuation office in Nottingham.

Claire Talbot moved to a new role as a Policy Adviser having previously worked as a Technical Adviser in the team.

Chris Murrucane replaces Sue New also as a Policy Adviser having moved from CT & VAT.

Jon Clarke joins us from the Oil Taxation Office as a Technical Adviser as does Tom Rollinson also from the Oil Taxation Office.

Tony Stirling joins us from HMRC Trusts in London as a new Share Scheme Adviser.

And lastly but no less importantly news of those who have jumped ship! Pete Clitheroe, an eminent and experienced Share Schemes Adviser who helped to bring the Share Incentive Plan into existence retired in March 2006.

Dominic Burke, Policy Officer and NICs guru on share schemes resigned last year to take up a position outside HMRC.

Seng Yeoh, another eminent Share Scheme Adviser also took early retirement at the end of September 2006.

Janice Cross, captain of ESSU and who led the team with great energy and enthusiasm also took early retirement at the end of August 2006.

We wish them all the best in whatever adventure they have planned for the future.

## Contact us

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