

Minutes of meeting held on 23 September 2013
Place: HMRC, 100 Parliament Street, London, SW1A 2BQ
Attendees:

Name	Organisation
Graham Muir	Share Plan Lawyers Group
Chris Laughlin	Institute of Chartered Accountants of Scotland
Philip Paur	ExPats Tax Forum
Alison Smith	Confederation of British Industry
Martin Benson	Institute of Chartered Accountants of England & Wales
Kathleen Russ	British Venture Capital Association
Anne Croft	Chartered Institute of Taxation
Gabbi Stopp	ICSA Registrars Group
Fiona Bell	Quoted Companies Alliance
Malcolm Hurlston	Employee Share Ownership Centre
Richard Nelson	Cytec Solutions
Robin Kerner	National Grid
Nichola Ross Martin	Association of Tax Technicians
John Collison	IFS Proshare
Jason Piper	ACCA
Maureen Beresford Georgia Brown	Department of Business Innovation & Skills
Joanne Gibson (Chair)	HMRC
Barry Roland	HMRC
John McLoughlin	HMRC
Anne Smith	HMRC
Andrew Ellis	HMRC
Hasmukh Dodia	HMRC
Colin Strudwick	HMRC
Adrian Cooper	HMRC
Owen Price	HMRC
Ian Atkin	HMRC
Debbie Walker	HMRC
Tim Plant	HMRC

Apologies from Chas Roy-Chowdhury (ACCA), Nicholas Stretch (Quoted Companies Alliance), Graeme Nuttall (Employee Ownership Association & Cabinet Office Mutuals Ambassador), Linda Whewell (HMRC).

1. Introduction

The chair welcomed attendees. Minutes of the last meeting had been agreed and published. Forum minutes, agenda and terms of reference are available at: <http://www.hmrc.gov.uk/consultations/ers-forum/index.htm>

2. Action Points

Action points from the last meeting were discussed.

Action Point 1 – HMRC to circulate minutes of the Understanding Your Business sub-group meeting held on 24 April 2013. *Minutes circulated on 24 May 2013.*

Action Point 2 – HMRC to circulate minutes of the tax advantaged share schemes sub-group meeting held on 29 April 2013. *Minutes circulated on 24 May 2013.*

Action Point 3 – HMRC to report back to Forum on company law requirements in relation to the issue of shares and the new employment status. *Clarification provided on 4 June 2013 and agenda item at this meeting on employee shareholder.*

Action Point 4 – HMRC to circulate draft tax guidance notes on employee ownership. *Draft guidance circulated on 24 May 2013 and guidance published on the HMRC website on 4 July 2013.*

Action Point 5 – HMRC to consider FATCA subgroup meeting. *FATCA subgroup reconvened on 14 June 2013 and met again on 18 September 2013.*

Action Point 6 – HMRC to circulate a summary of the issue raised around CGT. *Circulated on 26 July 2013, and CGT issues are on the agenda for this meeting.*

3. Employee shareholder shares

Forum members asked about the requirement that fully paid up shares must be issued or allocated to an employee shareholder, but that no additional consideration could be provided for these shares. It had been suggested that companies would pay up the nominal value of shares out of distributable reserves, although some companies could not do this without a change to their Articles, and others may not be in a position to create distributable reserves. Forum members also requested clarification in certain areas.

BIS gave a summary background of the policy behind the new employment status. It was explained that the aim had been to implement the new policy without making too many changes to the Companies Act. It was stressed that the new status should be considered carefully by prospective employee shareholders and company officials and shareholders. BIS also welcomed being made aware of policy or legal issues that could affect take-up.

Treasury shares -

Could treasury shares be used? Are such shares covered by the wording of section 205A of the Employment Rights Act 1996?

BIS take the view that section 205A ERA as it stands already applies to treasury shares and the reference to "shares in the company" has a broad meaning. The intention is that treasury shares can be used as part of this policy, and BIS do not anticipate questioning Employee Shareholder status on the basis that treasury shares have been awarded. BIS are in discussions

with Parliamentary Counsel with a view to make appropriate clarifying amendments in this area.

Money's worth –

Is it open to directors of a company to be satisfied that the employee entering into an employee shareholder agreement could constitute money's worth and therefore a capital contribution to pay for the shares?

Companies may treat the individual's entry into the employee shareholder agreement as 'money's worth' in legal terms. It is for a company and (if relevant) their accountants to be satisfied that the value attributed to the employee shareholder agreement is sufficient for the employee shares to be fully paid up. This is an accounting question and not a legal question.

Where a parent company issues shares, the same accounting issues arise. If the parent company is satisfied that the value received from entry into the employee shareholder agreement is the value of the shares, then the shares may be paid up under the current legislation. However in practice BIS do not foresee a parent company being able to pay up its shares in this manner.

Third Parties

A third party (such as an EBT) paying up the value of the shares will satisfy the requirements of the legislation.

Guidance

BIS are currently working on the updated guidance and expect this to be published within the next few weeks.

BIS undertook to consider the various points raised at the meeting and report back. They would also welcome further comments or questions (Maureen.Beresford@bis.gsi.gov.uk).

Where BIS are content that all of the conditions for employee shareholder status are met, or an agreement satisfies the conditions set out in BIS guidance, HMRC do not anticipate challenging an individual's status as an employee shareholder for the purposes of the tax reliefs. This includes those cases in which treasury shares are awarded to the employee shareholder.

HMRC also confirmed that if an employer sought to replicate some or all of the lost rights by giving contractual rights designed to have similar effect that would not exclude an employee shareholder from the tax reliefs. The circumstances in which tax relief will not be available to a person who is an employee shareholder are those set out in tax legislation.

There was also concern expressed about what appeared to be an inconsistency between the HMRC and BIS guidance on the requirements to be fulfilled for a person to become an employee shareholder. HMRC agreed to check the guidance on this point and report back to the Forum.

Action Point 1 - BIS to consider more specific points raised by ERS Forum members and provide responses to be circulated among the membership.

Action Point 2 – HMRC to check the Employee Shareholder tax guidance for consistency with BIS guidance.

4. Sub-Group report backs

ERS & FATCA Sub-group (John Mcloughlin)

The subgroup has met on two occasions; on 13 June and 18 September 2013. There has been a 6 month delay in the implementation of FATCA. HMRC has published guidance, and further details on agreements with Overseas Territories and Crown Dependencies should be provided later this year. The next step is for HMRC to publish the general principles that will determine how FATCA applies to various ERS arrangements, and for the subgroup to lead the development of sector specific guidance.

Action Point 3 – HMRC to circulate FATCA subgroup minutes (as well as the general principles).

Tax Advantaged Share Schemes Sub-Group (Anne Smith)

The Tax Advantaged Share Schemes subgroup met on 23 September 2013. Issues discussed included the progress of the Self Certification project, the development of online filing and the 'grey areas' where additional clarity may be needed to enable businesses to self certify schemes.

5. CGT

The issue of the CGT base cost of restricted stock units (RSUs) was raised by a Forum member. This was generating problems in cases where an employee is resident and working abroad. It was suggested that the current statutory position provides for a 'double tax charge' in certain cases. Further clarity was sought from HMRC. It was noted that changes to the tax treatment of ERS awarded to internationally mobile workers (as recommended by the Office of Tax Simplification) could provide a solution to problems created by the current position.

A further issue concerning internationally mobile employees was raised around CGT share pools and income taxable shares. Attention was drawn to the effect of the current rules and the different tax outcome that arises from a same day or later disposal of the shares. HMRC sought further evidence on the scale of the issue and its effect, so this could be considered further at policy level.

Action Point 4 – Forum members to gather evidence of scale of the issue and report back.

6. Developments in employer compliance in Large Business Service

There was an update of compliance work by HMRC's Large Business Service (LBS). An overview of the structure and work carried out by LBS was given, with an explanation of the risk based approach used in compliance work. LBS conduct business risk reviews of each of the organisations they are responsible for and are introducing standard operating procedures to ensure there is a consistent approach to this work. It was explained that LBS had brought in five individuals with significant private sector experience on two year fixed-term contracts to help LBS staff better understand commercial realities. LBS will also be running a project on "Rewards" to get a better understanding of its customers' remuneration practices. "Test Drills" is

another approach in which around 20 businesses that award ERS will be identified followed by questions and meetings focussing on the ERS aspects of remuneration. LBS are also seeking to build expertise around five key themes including EBTs, ERS and globally mobile employees. LBS are looking to implement a triage system to try to ensure that customer queries are dealt with quickly, effectively and by the right people. LBS are also looking to make better use of the data available to them, including from RTI, for compliance work and risk profiling.

7. HMRC Digital service

The background to HMRC's digital strategy was set out, including the aims and benefits for both HMRC and external customers. HMRC are seeking to understand the interaction between administrators and employers when filing end of year employee share scheme returns and how best to provide an effective digital solution. Forum members asked if a "white space" could be included as they often need to provide an explanation of entries they have made on their forms. HMRC stressed that in general, digital services try to replace white space with more relevant questions or, if possible, a dropdown list. Forum members broadly supported the emerging design but expressed concern at the possible use of Excel spreadsheets as a means of sending HMRC information as the data can be manipulated before it is submitted. Forum members also stressed the need for rigorous testing to ensure the digital process worked for organisations. HMRC noted these concerns and will continue to work with businesses to develop and test the template forms.

8. Self-certification of employee share schemes project – update

HMRC gave a summary update on the self-certification of employee share schemes (ESS) project – including latest thinking on HMRC's proposed approach.

It is proposed that all current and new tax-advantaged ESS will need to be registered individually. Non-tax advantaged ESS will however be registered under one reference number. Registration of ESS will be through the PAYE online service.

It is proposed that EMI1 notifications will be available online from 6 April 2014. The 2014-15 ESS annual returns will be the first returns to made online and there be a facility to amend returns.

It is proposed that there will also be an enquiry process similar to that which currently applies for EMI1. Automatic penalties will apply to late or non-filing of returns.

There was a request that all questions on online forms must be visible and the ability to save and print should be incorporated in the design.

[ERS Bulletin No.8](#) gives more detail about the self-certification process. HMRC will also undertake user testing.

The current approvals process is expected to cease in 2014. Scheme advisers will be available to assist in the first year of self-certification of ESS, but there will be no advance assurance for SIP, SAYE and CSOP, other than the general clearance process. HMRC is working on draft legislation with the

aim of publishing this for comment at the Autumn Statement. Guidance on registration and self-certification process is being developed.

9. Forum Issues log (John McLoughlin)

An updated log had been provided to Forum members. It was agreed that issue number six, regarding EMI guidance and support for start-ups had now been completed with the publication of EMI valuation guidance. All other issues were retained on the log. No new issues were added.

10. Any Other Business & next meeting

There was no other business.

The next ERS Forum meeting is proposed to take place on 9 December 2013 at 1.00pm at Euston Tower. Further details about the venue and joining details will be provided closer to the date.

Minutes prepared by HMRC Savings Audit and Share Schemes