



HMRC Employment Related Securities Forum

Minutes of meeting held on 8 January 2015

Place: 100 Parliament Street, London

Attendees:

Name	Organisation
Graham Muir	Share Plan Lawyers Group
Chas Roy-Chowdhury	ACCA
Alison Smith	Confederation of British Industry
Malcolm Hurlston	Employee Share Ownership Centre
Graeme Nuttall	Employee Ownership Association & Fieldfisher
Alan Scott	IFS Proshare
Helen Hopkins	ICSA Registrars Group
Nicholas Stretch	Quoted Companies Alliance
Martin Benson	ICAEW
Fiona Bell	RM2 Partnership
Mike Crabtree (Chair)	HMRC
Barry Roland	HMRC
Colin Strudwick	HMRC
Tony Spindler	HMRC
Susan Lambert	HMRC
Hasmukh Dodia	HMRC
Debbie Walker	HMRC

Apologies: Philip Paur (ExPats Tax Forum), Nichola Ross Martin (Association of Tax Technicians), Richard Nelson (Cytec Solutions), Gabbi Stopp (ICSA Registrars Group), Anne Croft (Chartered Institute of Taxation), Institute of Chartered Accountants, Scotland, John Nolan (CIPP).

1. Introduction

The chair welcomed attendees. Minutes of the last meeting had been agreed and published on the Gov.uk website. Forum minutes, agenda and terms of reference are available at:

<https://www.gov.uk/government/groups/employment-related-securities-forum>

The chair outlined the changes in **ESSU** personnel:

- Jo Gibson, John Mcloughlin & Anne Smith have moved to the Pensions team.
- Mike Crabtree is temporarily in charge until a successor has been appointed.
- Jon Clarke is temporarily leading share schemes policy. Tom Rollinson remains in charge of technical advice work.
- Susan Lambert continues to lead on ERS products and processes.

All the Action Points from last meeting were cleared following that meeting.

2. ERS Online Service – Update and Annual Returns

ERS online service went live from April 2014. All live tax-advantaged and non-tax advantaged schemes have to be registered online. Additionally SIP, SAYE and CSOP have to be self-certified as meeting the requirements of the relevant ITEPA Schedule. EMI option grants have to be notified online and annual returns for all registered schemes will have to be made online from 2014-15 tax year.

HMRC gave an overview of the work in progress on the templates and technical note, the checking service and the annual returns service. :

Clarifications have been made to the column headers in the templates following stakeholder feedback. We aim to publish the revised versions around the end of January.

A technical note is available for companies wishing to develop their own spreadsheets. Contact [HMRC](#) for a copy of the technical note.

There is an ERS returns templates checking service now in place. This can be used by anyone who has access to the ERS online service. It will check whether the template has been completed in the correct format and can be used throughout the year. HMRC has in response to customer demand provided the ability to submit ERS returns in CSV formats. A private beta testing of the returns service will start on 18th February and HMRC is seeking around 50 volunteers to participate in this. Further information will be available in the next ERS Bulletin.

HMRC also advised that scheme registrations were progressing well. Companies waiting to register their schemes should do so without any further delay. If there are any IT issues stopping registration then this can be identified and fixed before the end of the tax year. No reminders will be issued to companies to submit their annual ERS templates. There are penalties for missing returns deadlines.

Forum members raised a number of concerns about how the ERS online service works. These are listed below with HMRC responses in italics:

- EMI share option notified but is found to be a non-qualifying option. If the option is cancelled for nil consideration and re-granted to make it a qualifying EMI option what online action is needed? *HMRC advised that the new option should be notified online and the original option should be shown as cancelled on the annual ERS EMI return.*
- What data can HMRC see and what is HMRC going to do anything with the data? *HMRC does not see the data in the format that it is submitted online. It has the capability to interrogate the data to support compliance campaigns and actions.*
- How can companies and their advisers obtain copies of whatever it is that HMRC can see? It is not a useful thing for companies or their

advisers: we cannot see what has been input. *HMRC does not see the data in the same format as submitted by the customer for example on an EMI option notification. It is not possible for HMRC to provide copies of the information submitted on an EMI option notification. Customers are advised to print off or take a screenshot of the 'summary screen' that displays all the information about to be submitted in a particular notification.*

- Penalties: are HMRC going to charge penalties on data input? You have your new share scheme reporting penalties, what is your policy to be? Typically people get very muddled about values between UMV and MV and more so in the case of EMI shares. *HMRC advises that customers should carefully consider the information being entered in each screen during the notification process. Customers are required to make a declaration that the information they are providing is accurate and complete. There is no penalty for completing the EMI option notification with errors. However, if HMRC compliance action shows that the EMI option could not be a qualifying option because of the errors then it will be treated as a non-tax advantaged share option.*
- How to make changes: how can we make corrections?
For example I set up details for a client's new EMI scheme. Unfortunately HMRC advise that the scheme does not qualify for EMI because the shares do not meet the value (quite a new company). I would like to undo the entry but cannot. I am not the company's PAYE agent because I am only there to advise on share scheme matters and not day to day PAYE. How do I unravel this situation? *If the option is cancelled it should be notified as cancelled on the end of year EMI return. If the option is not cancelled then it should still be notified as cancelled and reported on the 'Other' return for non-tax advantaged ERS options.*
- In another case, I set up an EMI notification but our internet went down, I could not tell what was accepted. I cannot see the notification. I re-entered the information and still cannot see the notification. *It is not possible for HMRC to provide copies of the information submitted on an EMI option notification. Customers are advised to print off or take a screenshot of the 'summary screen' that displays all the information about to be submitted in a particular notification. If there has been a break in the transmission of the notification then depending on the point at which that happens a partially completed notification will be held in the system. You would log back and continue with that notification.*
- The circle with a question mark on it: an observation: when you click it, it moves around the screen. *HMRC is not aware this is an issue with the way the ERS service operates. Customers who encounter IT service issues should log the issue with HMRC IT Helpdesk.*
- Date of final event: there is no guidance for EMI schemes. A scheme might end but that might not be the end of ERS for that company. *Guidance on the final event date is within the ERS service. Access the help by clicking on the question mark.*
- Can I register as an ERS adviser without being PAYE adviser? *Yes it is possible to register as an ERS Agent only.*

Action Point 1 – HMRC to provide contact details for the February testing service.

HMRC response: *People interested in taking part in the private beta testing should contact steven.gee@hmrc.gsi.gov.uk*

3. Autumn statement update – Colin Strudwick

HMRC gave an update on announcements made at the Autumn Statement 2014. Government had decided not to proceed with the OTS's recommendations on 'marketable security' and 'employee shareholding vehicle'. Responses to 'marketable security' consultation did not indicate significant demand for the changes to be made. Responses to the 'employee shareholding vehicle' (ESV) consultation indicated no demand for the additional safeguards the Government felt would be necessary.

Forum members were interested to note that in the ESV Summary of Consultation of responses the Government had indicated it will keep the individual issues raised by the discussion paper under review where there may be scope for reducing burdens on businesses wishing to use EBTs. In that respect they were interested to know whether any review of section 455 CTA2010 would be considered. HMRC agreed to contact the policy owners of that subject area and consider setting up a sub-group as appropriate.

Action Point 2 – HMRC to contact s455 CTA2010 policy team.

HMRC response: *As promised, following discussion of the impact of section 455 of the Corporation Tax Act 2010, we contacted the policy holders in HMRC. Their views are as follows.*

The policy rationale for section 455 applying to loans to some trusts is that it is a wide piece of legislation that is intended to apply to situations where value is passed from a close company to its participators via loans, even where that value passes indirectly, and both quite often occur in such cases. To identify and remove 'vanilla' transactions from the regime would be complex and could create avoidance opportunities that would undermine the regime.

This particular question has been put to ministers twice during 2014: both as part of the OTS's proposal for a new Employee Shareholding Vehicle and also as part of a consultation on broader reform of the loans to participators regime, which eventually condensed to focussing on loans to EBTs, charities and partnerships. The points raised by stakeholders, including members of the ERS Forum, were considered in both consultations. However, in each instance the Government decided that an exemption was not justified.

HMRC therefore do not consider that further discussion would be worthwhile at this stage.

4. Forum Issues Log – Hasmukh Dodia

An update was given on the issues on the Forum issues log. It was agreed that most of the issues had been addressed and or resolved and will therefore be removed. The issue around CGT on disposal of shares acquired from different sources will remain on the log.

5. AOB and next meeting

A technical point was raised by a Forum member on where a company funds an employee share ownership trust to allow the trust to purchase a controlling interest of shares there may be interest charged by the vendors. This will be a cost to the ESOT for several years without any income from which to deduct the expense. The issue has been referred for technical advice.

Action Point 3 – HMRC to confirm the technical advice to ERS Forum members.

A question was raised about when the tax guidance on the new EOT legislation be available. HMRC said it would find out and report back to the ERS Forum.

Action Point 4 – HMRC to inform ERS Forum members when the tax guidance is likely to be published.

Forum member wanted to know why HMRC was not willing to give Pre-Transaction Share Valuation for shares to be used in the EOT arrangements even though the Government was promoting the EOT business model and put legislation in place for employees to be awarded tax and NICs free £3,600 bonus through their employer. HMRC agreed to take the point away for further consideration.

Action Point 5 – HMRC to consider whether PTVC can be given for EOT shares.

Member requested that future meetings should consider allowing members who could not attend to be able to dial into the conference call facility. HMRC agreed this would be set up for the next meeting.

There was no other business.

The date for the next Forum meeting has not been fixed due to the pending General Election. It is likely to be arranged for Autumn 2015.

Minutes prepared by HMRC Employee Share Schemes Unit