



HMRC Employment Related Securities Forum

Minutes of meeting held on 6 October 2015

Place: 100 Parliament Street, London

Attendees:

Name	Organisation
Graham Muir	Share Plan Lawyers Group
Nichola Ross Martin	Association of Tax Technicians
Alison Smith	Confederation of British Industry
Isobel Evans	Employee Share Ownership Centre
Graeme Nuttall	Employee Ownership Association
Gabbi Stopp	IFS Proshare
Helen Hopkins	ICSA Registrars Group
Nicholas Stretch	Share Plan Lawyers Group
Anne Croft	CIOT
Fiona Bell	Quoted Companies Alliance
Susan Cattell	Institute of Chartered Accountants Scotland
Victoria Green	Confederation of British Industry
Philip Paur	Expats Forum
Kathleen Russ	BVCA
Adrian Cooper (Chair)	HMRC
Tom Rollinson	HMRC
Rufus Rottenberg	HMRC
Tony Spindler	HMRC
Hasmukh Dodia	HMRC
Debbie Walker	HMRC

Apologies: Richard Nelson (Cytec Solutions)

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:

- Adrian Cooper has taken over from Mike Crabtree as head of the business until the end of December 2015.
- Colin Strudwick and Susan Lambert have recently left the team.
- Jon Clarke and Tom Rollinson remain in charge of technical advice work. Rufus Rottenberg has recently come on board to help on policy work
- Debbie Walker is currently leading on ERS products and processes.

Outstanding Action Points from last meeting:

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

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 was referred for technical advice.

HMRC technical expert who attended the Forum meeting gave the following reply:

The query relates to where an ESOT is charged interest in respect of the acquisition of shares to allow the trust to have a controlling interest in a company. If the interest is paid by the company is it an allowable deduction or is there legislation that would disallow the interest.

The response is in respect of the employee benefits contributions legislation in Part 20 CTA 2009.

A requirement for Part 20 to apply is that the deduction has to be otherwise allowable (s1290(1)). It is questionable whether this is the case as it appears that a purpose of the borrowing is to facilitate a change of ownership of the company so it is not clear that the expense is wholly and exclusively for the purposes of the trade.

On the assumption that the amount is otherwise allowable, the payment is within Part 20, it is reducing the liability of the employee benefit scheme and is therefore within section 1291(1)(b). As the requirements relating to the provision of qualifying benefits of section 1292 will not be met no deduction would be allowable.

So in conclusion if the amount would be otherwise allowable HMRC view is that the expense would be disallowed by Part 20. If there are any contrary views or interpretations of this legislation then we would welcome them from the forum members and consider the topic further.

[Following the meeting there was a further discussion between HMRC technical adviser and a Forum member where it was agreed that providing the expense would be otherwise allowable Part 20 CTA 2009 would not disallow amounts paid as they are qualifying expenses under section 1290(2)(a) CTA 2009]

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

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

HMRC informed members Capital Gains (CG) guidance is ready to go into the CG manual. Unfortunately it has been caught up in the migration of the guidance manual to the new Gov.uk website. The process seems to be taking a lot longer than anticipated. The same applies to the Employment Income

Guidance which will cover the income tax treatment of the payments by the EOT.

New Action Point 1 - The chair requested that HMRC approach the manual owners to see if they could share the guidance with the members in advance of the publication.

Action Point 5 – HMRC to consider whether Pre-Transaction Valuation Check (PTVC) can be given for EOT shares.

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.

HMRC replied that it wasn't a question of not being willing but more about effective use of SAV resource. SAV are currently in the process of reviewing clearance work as it is resource intensive and in the majority of the cases the proposed values were not disputed. Allowing for this SAV want to consider if there are other alternatives to the current processes that are more effective.

2. ERS Online Service – Update

ERS online service went live from April 2014 and annual returns for all registered schemes have to be made online from 2014-15 tax year.

HMRC has contacted companies whose scheme returns need to be re-submitted. Due to an IT issue the data provided in the original returns was not readable. Companies should only re-submit returns specified in the HMRC letter. They don't need to contact HMRC to find out whether any of the other schemes they have registered have been affected.

HMRC may issue a reminder of the re-submission if it appears that there are a large number outstanding.

Member raised the question about whether penalties would be applied if companies don't re-submit as requested by the deadline. HMRC said that it did have powers to request the re-submission of the returns and failure to do so could result in a penalty, though at this stage HMRC did not envisage using that power.

Member asked whether there was a capacity issue with the ERS online service. HMRC advised it wasn't the capacity issue that led to the stoppage of the returns service in July 2015. The service is geared to handle a large amount of online returns traffic.

Member wanted to know whether the templates will be revised for 2015-16 and if so when will these be finalised. HMRC replied they were currently looking at the feedback from various users and stakeholders and aim to provide the updated templates by the end of December 2015. It is not possible in the time available to make huge changes. Some of the columns headings will be changed and accompanying guidance will be expanded.

In response to a member request for a simpler template HMRC replied there were no plans to provide alternatives other than the ability to create your own CSV files. Customers do not need to complete all the sheets in the templates but they do need to look at what is required to be reported. HMRC is looking to publish the tech note that explains how to create a CSV file.

HMRC expressed concern that there were still a number of scheme returns outstanding for 2014-15 tax year. Members were encouraged to speak to their clients and remind them of making their returns as soon as possible. The issue was also highlighted in ERS Bulletin No21 published on 25 September 2015.

Members wanted to know why a delete facility is not available where a scheme has been registered in error. Currently to end an erroneous registration the company has to enter a date of final event even though the scheme never existed as registered. HMRC replied there were no plans to add this kind of facility. The ERS service cannot distinguish between schemes registered correctly and incorrectly. Adding a delete button may also lead to customers inadvertently deleting a scheme which may not only be difficult to rectify but could also impact on the tax advantages of SIP, SAYE and CSOP.

3. Taxation of RSU's

HMRC gave a short summary of the background to current policy work around the taxation of RSUs. While HMRC continues to be happy for companies to apply a Chapter 5 analysis to RSUs and other securities options if they think that is supportable, we have been told by a number of specialist advisers that there is continuing uncertainty in this area which is not resolved by HMRC's current policy or handling of individual cases.

As a result, HMRC are considering whether a further amendment to the rules to clarify the tax treatment would be appropriate. HMRC are holding a special meeting with interested stakeholders on 9 October 2015 to discuss the way forward.

4. Geared growth shares research report

Nicholas Stretch was asked to give a summary and his view of the research report on the use of growth shares published by HMRC on 17 September 2015. Growth shares are a relatively un-researched area of employee remuneration. In order to enhance HMRC's understanding of how growth shares are used in the business community, exploratory research was commissioned to provide insight into the types of employment-related securities arrangements that are favoured and used by businesses.

The report identified the type of companies most likely to use growth shares as ERS incentives and indicates that these shares are used primarily for genuine commercial purposes. Research found that growth shares as form of employee incentive have a role to play in encouraging growth of businesses.

Members were aware the report does not reflect the views of HMRC. They wanted to know whether HMRC will consider any policy changes affecting the taxation of geared growth share arrangements generally following the findings of this report. HMRC replied the report was commissioned to find evidence on

the use of these shares that would help inform any future policy work in this area. It was not possible to comment at this stage whether HMRC was looking to change the rules; like all other policy areas, this one is always kept under review.

5. Forum Issues Log

The Forum issues log was out of date. It was suggested by HMRC and agreed that going forward the log will not be kept. Taking action points at the meeting and responding to them worked better.

5. AOB and next meeting

There was no other business.

The date for the next Forum meeting has not been set but is likely to be in January or February 2016.

Minutes prepared by HMRC Employee Share Schemes Unit