

**Minutes of meeting held on 20 May 2013**
**Place: HMRC, 100 Parliament Street, London SW1A 2BQ**
**Attendees:**

<b>Name</b>	<b>Organisation</b>
Graham Muir	Share Plan Lawyers Group
Chris Laughlin	Institute of Chartered Accountants of Scotland
Philip Paur	ExPats Tax Forum
Gareth Peyton	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
Helen Hopkins	ICSA Registrars Group
Nicholas Stretch	Quoted Companies Alliance
Sam Dowling	Employee Ownership Association
David Poole	Employee Share Ownership Centre
Heidi Munn	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
Alan McGuinness	HMRC

Apologies from Chas Roy-Chowdhury (ACCCA), Graeme Nuttall (Employee Ownership Association & Cabinet Office Mutuels Ambassador), Richard Nelson (Howells Associates), Linda Whewell (HMRC) and Tim Plant (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 will engage with BIS and relevant stakeholders to develop guidance on certain aspects of employee ownership changes. *This is ongoing work.*

**Action Point 2** –Members of the Forum to review the organisation and operation of the Forum and send their thoughts by email to HMRC

[Shareschemes@hmrc.gsi.gov.uk](mailto:Shareschemes@hmrc.gsi.gov.uk). No comments have been received. It was agreed that comments were welcome at any time on this point.

### **3. Sub-Group report backs**

#### **Understanding Your Business Sub-Group (Joanne Gibson)**

First meeting of this sub-group was held on 24 April 2013. The purpose is to explore with businesses the practical day-to-day issues that they face when meeting their obligations in relation to taxation and ERS.

At the first meeting an outline was given of the proposed re-design of the Form 42 reporting process. HMRC would like to visit companies to see their payroll processes in relation to their share scheme transactions. Members of the sub-group were asked for suggestions for discussion at future meetings.

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

#### **Tax Advantaged Share Schemes Sub-Group (Anne Smith)**

This sub-group met on 29 April 2013. Issues discussed included:

- The 'Quick Response' triage trial for tax advantaged share schemes, which has now ended and will be evaluated shortly.
- Self-certification of SIP, SAYE and CSOP schemes. From April 2014 employers will need to register both existing and new schemes. In order to do so an employer will have to be registered with the PAYE Online service.
- Online filing of HMRC share scheme forms. The aim is to simplify forms as far as possible - to provide intelligent forms that enable customers to navigate to the pages they need to complete, with explanations and calculators where appropriate.

The group also continues to identify 'grey' areas where additional guidance or technical support may be needed to enable businesses to self certify schemes.

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

### **4. Changes to the tax-advantaged share schemes – update on Finance Bill clauses**

HMRC provided an update on the progress of Budget and Finance Bill changes in relation to ERS.

*Employee shareholder status* – The Growth and Infrastructure Bill (G&I) has now received Royal Assent. Tax reliefs for employee shareholders are set out in Finance Bill 2013. It is intended that the first £2,000 of share value that employee shareholders receive will usually not be subject to income tax and NICs, and that any gains made on up to £50,000 of share value awarded will usually be exempt from CGT.

Employers must meet reasonable costs of the legal advice that must be obtained by individuals considering a job offer under the employee shareholder status, and the Government is looking at the tax implications of this.

There was general discussion around the new employment status. Questions were raised around company law and the requirement to issue shares free of charge to the employee shareholder. HMRC agreed to discuss with the Department of Business Innovation & Skills and update the Forum.

Questions were also raised about valuation – in particular, whether there will be a special procedure for valuation of shares. HMRC stated that it was likely to follow the same process as currently applies for EMI, but this was subject to further thinking and development.

There was a discussion on the CGT exemption and company reorganisations. HMRC confirmed that the CGT exemption would not transfer to the new holding of shares. Section 127 of the Taxation of Chargeable Gains Act 1992 (which acts to prevent the reorganisation being treated as a disposal and instead treats the original shares and the new shares as being the same asset) does not apply to exempt employee shareholder shares. So, if on a reorganisation there is a disposal of exempt employee shareholder shares a gain will accrue, but the gain will be exempt. Shares within the new holding will not be exempt from CGT unless they are exempt employee shareholder.

**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.

*Changes to the tax advantaged share schemes* – Finance Bill 2013 contains provisions implementing changes to the tax advantaged employee share schemes recommended by the OTS. HMRC is grateful for all the comments received on the draft legislation.

*Corporation tax relief for employee share acquisitions* – These Finance Bill clauses clarify the availability of CT deductions for share options in cases where an employee does not acquire the shares; and clarify that where the statutory deduction for employee share acquisitions is available, no other deduction should usually be made. A number of technical issues were discussed around the scope of the proposed measure.

## **5. Self-certification of employee share schemes project – update**

HMRC provided an outline of how self-certification of SIP, SAYE and CSOP will operate. [ERSS Bulletin No.8](#) published on 16 May 2013 contains an article on this process. Self-certification will start from April 2014 and online filing of annual returns will start from April 2015. To access the self-certification facility, companies will need to have registered and have access to PAYE online service. Forum members raised various questions and points around the process, and design work remains ongoing through the relevant sub-group.

## **6. Government response to OTS report on non tax-advantaged employee share schemes - update**

HMRC explained that the Exchequer Secretary to the Treasury (XST) David Gauke gave his initial response to the OTS report on their review of unapproved employee share schemes in March 2013. XST response letter to the OTS is published here -

[http://www.hmtreasury.gov.uk/d/letter\\_david\\_gauke\\_ots\\_200313.pdf](http://www.hmtreasury.gov.uk/d/letter_david_gauke_ots_200313.pdf)

HMRC consultation document will be published shortly. Consultation will run until 16 August 2013 and is asking for comments on five recommendations made by the OTS in their report. Details about how to respond are contained in the consultation document.

## **7. Employee ownership update – Dept of Business Innovation & Skills (BIS)**

Employee benefit trust deed templates for setting up employee owned companies have been published in draft by BIS. Comments are invited from lawyers and experts in trust law.

Following BIS consultation on changes to deregulate the conditions under which companies can arrange share buy backs, BIS have taken forward these proposals and have made some additional deregulatory changes. The Companies Act 2006 (Amendment of Part 18) Regulations 2013 that gives effect to these changes became law on 30 April 2013.

HMRC has been working on tax guidance in these areas. This draft guidance will be shared with Forum members for comment.

4 July 2013 has been nominated as employee ownership day.

A point was raised about whether employee ownership includes private equity owned companies. BIS advised that the definition they were applying was provided in the Nuttall Review report. In the Report it says “employee ownership means a significant and meaningful stake in a business for all its employees.”

**Action Point 4** – HMRC to circulate draft tax guidance notes.

## **8. Forum Issues log (John McLoughlin)**

An updated log had been provided to Forum members. It was agreed that the entries on OTS review of tax-advantaged share schemes and changes to the residence rules should remain on the log; there was a request for FATCA subgroup to be reactivated. There was request for further background on the entry concerning CGT and disposal of shares acquired from different sources, and HMRC agreed to circulate further details. Employee Ownership and the OTS report on ‘unapproved’ employee share schemes have been added to the log.

**Action Point 5** – HMRC to consider FATCA subgroup meeting.

**Action Point 6** – HMRC to circulate a summary of the entry concerning CGT and disposal of shares acquired from different sources.

## **9. Any Other Business & next meeting**

A point was raised about the commencement rules for the changes to Entrepreneurs Relief for Enterprise Management Incentives shares – that a person who has exercised an option prior to the commencement date may be at a disadvantage compared to a person who had not exercised. It was acknowledged, however, that the commencement rules are more beneficial than a rule that is limited to options granted on or after the commencement date.

The next ERS Forum meeting is proposed to take place on 23 September 2013 at 1.00pm.

**Minutes prepared by HMRC Savings Audit and Share Schemes**