

Employment Related Securities reporting

Employers have an obligation to inform HM Revenue & Customs (HMRC) about transactions in Employment Related Securities (ERS).

ERS include shares and share options awarded under typical employee share incentive schemes and some other more bespoke arrangements. Employers have an obligation to report most ERS transactions annually, and the deadline for filing the annual return for transactions in the year to 5 April 2021 is 6 July 2021. The return must be filed via HMRC's online portal.

Reportable events

Reportable transactions/events include:

- The grant and exercise of share options (but not the grant of EMI options, which are reported separately)
- The award of restricted stock units
- Changes to the rights of securities
- Acquisitions from the employee for more than market value (e.g. a good leaver receives the amount paid for shares, but their value has decreased)
- Certain share or option cancellations
- Rights granted and shares acquired under employee share purchase plans

Transactions will need to be reported even where an employee has paid market value for the securities or the securities have a negligible value.

Information required

The amount of information required to file the return will depend on the type and number of transactions being reported.

This is not an exhaustive list, but for an issue of shares, or an exercise of options, the return must include:

- The company issuing the shares, including its address
- The names and National Insurance numbers of the employees
- The number and type of shares awarded
- Any restrictions that could affect the market value of the shares
- Whether the employee has agreed to be taxed as though restrictions did not apply (by making a so-called 'section 431' election)
- The market value of each share and amounts which employees have paid for the shares
- Whether Income Tax and National Insurance Contributions (NIC) were collected under PAYE (e.g. shares issued by subsidiary companies)



We recommend businesses register as soon as possible to avoid missing the filing deadline.

Further information is also required for share plans that are 'net settled'.

If you have filed a return in the past, an annual 'nil return' is required until the scheme is closed even if there are no reportable events during the tax year.

Employees ceasing to be employed

If an employee leaves a company, the securities only cease to be ERS seven years after leaving. Therefore, transactions might still be reportable (and subject to PAYE), even after an employee has left.

Overseas companies

Overseas companies, and UK subsidiaries of an overseas parent, with employees performing duties in the UK, may have to file an annual return.

Registration for ERS online

If filing for the first time, the employer must register with HMRC for the online service (and not just its agent who handles its tax affairs). The ERS online service is then set up within the PAYE for Employers portal.

If only a payroll provider has access to the company's PAYE records, this will not be sufficient, as only the company's own access can be used to perform the registration functions, although returns can be submitted through the agent's service.

Late returns

There is an automatic penalty of £100 per share scheme registered if the return is not filed on time. An additional £300 penalty is charged if the return is not filed by 6 October 2021, and a further £300 if the return remains outstanding on 6 January 2022. Further penalties of up to £10 per day could be levied for returns which are outstanding after 6 March 2022.

Benefits from tax advantaged plans, such as Company Share Option Plans (CSOPs), may also be lost if these filings are not made on time.

If the employer has operated PAYE in respect of an ERS transaction, and the employer pays the tax and NIC on behalf of the employee, the employee must reimburse the employer within 90 days of the end of the tax year (i.e. by 4 July 2021) to avoid being charged on a taxable benefit.

How we can help

If you think you may have a reporting requirement, our team would be delighted to discuss this with you. We can also provide assistance with completing the forms and filing these with HMRC. Please contact Neil or Helena using the details below to discuss your requirements.



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