Tax Representation

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND & WALES

Tax Faculty

TAXREP 3/05

FORM 42 (2005) EMPLOYMENT RELATED SECURITIES: FURTHER RECOMMENDATIONS FOR CHANGE

Memorandum submitted in January 2005 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in relation to a request for future improvements to the published version of Form 42

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INTRODUCTION

1. Finance Act 2003 set out a new regime for the taxation of employee share schemes. The new regime, which is now to be found in Part 7, ITEPA 2003, includes new reporting requirements (Chapter 1) in respect of share transactions by employees and future or ex-employees. Details of share transactions need to be disclosed on new Form 42. Further to discussions during 2004, we have been asked to suggest changes to the proposed revised version of Form 42 which will be used for 2005 and our suggested modifications are explained below.

WHO WE ARE

2. The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 125,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).

4. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

GENERAL COMMENTS

5. Firstly, we are delighted that many of the comments and suggestions which we made in response to the 2004 version of the form, see TAXREP 50/04, have been implemented.

6. We welcomed, last year, the Revenue's publication of the short two page Form 42 Substitute as designed by Working Together, together with the announcement that alternative presentations of the information required by the Form are acceptable. We note that alternative presentations will continue to be acceptable, but we would also welcome confirmation that the short two page version of Form 42 will again be available.

7. The pdf version of the revised form did not print out on some systems. This was a significant problem last year and seems to be even more widespread with the proposed new form.

8. It would appear that only 15 of the proposed 16 pages have been circulated for comment and we have therefore been unable to comment on the proposals for page 1.

9. We have confined our further comments below to the form and content of the full 16 page Form 42 (the form). We have also concentrated on how the form will be used by the vast majority of small companies (estimated at around 300,000 last year) which are required to make a return because they have issued shares on incorporation rather than under a scheme.

Guidance notes

10. The revised form has been simplified slightly, but as we stated last year, the current form remains overcomplicated because it mixes together matters of information and instructions for completing the form with the boxes for completion. We again recommend that the two are separated, in a similar manner to the design of the self assessment tax return forms, and that the guidance notes are published separately.

Pre numbered boxes

11. As previously stated, all boxes for completion should be pre-numbered.

Access to the form

12. The form, together with the substitute simplified version and guidance notes, should all be easily accessible from the Revenue's website. At the moment, this material is still not easy to find, being categorised under 'Individuals and employees; share related awards; Annual Return Forms for Approved and Unapproved Schemes'. Whilst employers using 'share schemes' will be aware of their reporting requirements, we maintain that a simple issue of subscriber shares to members of a small family company, will not trigger thoughts of 'schemes'. We are again recommending that the existing signposting to these pages is improved. The 'search' facility should also be amended accordingly. Any future changes should be flagged on the main 'what's new' pages.

13. Consideration should also be given to reminding companies of the need to report share issues in other Revenue Bulletins, such as the Employers' Bulletin, although we accept that this will still not reach companies which do not have employees.

Responsible person

14. A description should be inserted early on in the Form of the person who is likely to be considered responsible, responsible that is for the supply of the necessary information.

Definition of security

15. The term security is still not mentioned until page three. We welcome the clarification on the Form that shares includes securities, but still feel that this could be explained earlier on the Form.

Information already submitted

16. We still maintain that in the case of a share acquisition, much of the information required by Form 42 will have already been submitted to the authorities:

- By completion of a duly completed and stamped share transfer form.
- By submission of Form 88 to Companies House following an issue of shares.
- By completion of Form CT41G for formation shares.

17. Consideration must be given to streamlining this information exercise to reduce the administrative burden placed on these new businesses. When canvassing our own members on the additional time requirement for completing the new Form 42 during 2004, the cost of their time was considerable.

Signature

18. We are pleased to note that the wording on the form has been clarified to state that the declaration on page 16 can be signed by any person authorised by the company to act.

SPECIFIC COMMENTS

Market value of securities

19. Income Tax self assessment has a procedure, CG34, for establishing the valuation of unquoted securities for the purposes of establishing a capital gain on a disposal. This enables an ITSA Tax Return to be submitted on time whilst reducing the likelihood of an unnecessary enquiry whilst the taxpayer and the Revenue agree the disposal value. Although this section of the form has been amended, we still recommend that there should be a cross reference to a situation where this procedure is being used.

Flat management companies

20. We continue to urge that further consideration should be given to allowing a concession for flat management companies. By their nature, such companies will not usually have employees and will not be providing employee benefits. This would afford a welcome administrative relief. This could perhaps be extended to provide an exemption for companies satisfying certain criteria.

Residence issues

21. We are pleased to have had clarification that non-taxable pre-assignment grants are not reportable. Unfortunately, the Revenue have not removed the reporting obligation for post-assignment exercises by persons formerly Resident but not ordinarily resident (NOR) in the UK that are not taxable under Chapter 3C, Part 7, ITEPA 2003. This policy should be clarified.

22. We should also like clarification of the reporting requirements where overseas workdays relief applies. We assume that it is the gross amounts? If so, this should be made clear, rather than the implication that what is reported is necessarily all taxable. We recommend allowing employers to insert a tick where they know that overseas workdays relief applies.

23. The guidance for non-residents peters out in Sections 2 and 3, where the position of employees who are NOR at grant is not dealt with at all. For instance, any employer of persons NOR would assume there was no immediate charge on the award of forfeitable restricted shares. While the Revenue need not go into detail on every page, it could at least point out that the position of NORs is different and refer back to an extended introductory guidance page.

International groups of companies

24. As previously commented, we understand that the 7 July deadline has led to the imposition of penalties for certain international groups of companies who find it impractical to collate the information needed on a world wide basis in such a short time frame. We are concerned to hear reports from our members that the Revenue appears not to be willing to consider an extension to the deadline in such circumstances. We are concerned that companies that seek to comply but have practical difficulties in doing so will face penalties in the nature of an annual levy. Consideration needs to be given to ensuring companies have the facility to agree more liberal deadlines for complying where this is appropriate.

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