

TAXREP 50/04

FORM 42 EMPLOYMENT RELATED SECURITIES: RECOMMENDATIONS FOR CHANGE

Memorandum submitted in October 2004 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. Schedule 22 of the Finance Act 2003 set out a new regime for the taxation of employee share schemes. The new regime includes new reporting requirements 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 earlier discussions, we have been asked to suggest changes to the existing version of Form 42 (2004) 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 welcome the Revenue's publication on 4 August 2004 of the short two page Form 42 Substitute as designed by Working Together, together with previous announcements that alternative presentations of the information required by the Form are acceptable. With this in mind, 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 not issuing shares under schemes but have issued shares on incorporation.

Guidance notes

6. The current form is overcomplicated by mixing together matters of information and instructions for completing the form with the boxes for completion. We 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

7. All boxes for completion should be pre-numbered.

Access to the form

8. 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 not easy to find. We recommend 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.

Responsible person

9. A description of the possible responsible persons, who may be required to supply the necessary information and hence complete the form should be inserted early on.

Definition of security

10. The term security, currently on page three, should be explained early on. Not all one man companies will understand that a share is a security.

Information already submitted

11. 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.
12. Consideration should be given to streamlining this information exercise to reduce the administrative burden placed on these new businesses.

Signature

13. The form is required to be signed by the company secretary. Although we understand that any director or the agent's signature are acceptable, this should be explained on the form.

SPECIFIC COMMENTS

Share schemes

14. Page 2 Approved share schemes states ‘do not include’, yet Enterprise Management Incentives begins ‘do include’. It is easy to misread these and it would be helpful if these two statements were consistent. For example, it would be clearer if the latter could be reversed to state ‘do not include EMI options granted below £100,000’.

Market value of securities

15. 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. There should be a cross reference to a situation where the acquirer has acquired such shares.

Flat management companies

16. Further consideration should be given to allowing a concession for flat management companies which by their nature will not usually have employees and will not be providing employee benefits. This will afford a welcome administrative relief. This could perhaps be extended to provide an exemption for companies fulfilling certain criteria.

PAYE reference

17. The company PAYE reference is required on the form. We have already commented that this will not be available for many newly formed companies.

International groups of companies

18. We understand that the 7 July deadline is likely to lead to the imposition of penalties for many 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 will face penalties in the nature of an annual levy. Consideration needs to be given to ensuring companies are able to agree more realistic deadlines for complying.

AM
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