



GMS Flash Alert

Global Compensation Edition

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United Kingdom - 6 July 2023 Employee Share Plan Reporting Deadline

U.K. employers must register any new reportable arrangements and file all Employment Related Securities (ERS) annual returns with the U.K. tax authorities on or before 6 July 2023.¹

Employers have an annual obligation to report any notifiable events that occur in relation to ERS (i.e., shares or other securities that are acquired by reason of employment), or rights to acquire ERS (such as employee share options or restricted stock units).

WHY THIS MATTERS

If employers do not meet their annual obligation to report notifiable events that occur in relation to ERS during a U.K. tax year (a U.K. tax year runs from 6 April to 5 April) and file related returns for 2022/23 (including any required 'nil' returns) by 6 July 2023, automatic penalties will arise.

Employers must be confident that the information provided in the annual returns is complete and correct and can be reconciled with their payroll and corporation tax compliance positions.

Share-based awards held by internationally-mobile employees, where the reporting, payroll, and corporation tax requirements are not completely aligned, can present difficulties. Employers should therefore review their mobile workforce carefully to identify any such challenges and determine how these should be addressed.

Early preparation of the returns should give employers a greater opportunity to make any required corrections to end-of-year payroll withholding. It should also allow any historical errors to be identified and proactively managed through voluntary disclosures to HM Revenue & Customs (HMRC), the U.K. tax authorities.

Process: in Brief

Any notifiable events must be reported to HMRC by submitting the relevant return(s) through ERS Online Services on or before 6 July 2023. This requires prior registration. HMRC uses the information provided in the annual returns to help identify any errors in employer payroll withholding on equity awards, errors in U.K. corporation tax relief claimed in relation to qualifying employee share acquisitions (e.g., where awards are 'net-settled'), and errors or omissions in employees' personal tax returns.

From 6 April 2023, HMRC's review and enforcement activities will be enhanced by the **new mandatory reporting** of the employer's PAYE reference, whether payroll withholding was operated, and the employee's National Insurance Number (NINO) (see below).

Reporting Obligations

Overview

In summary, employers have an annual obligation to report any of the following events that occur in relation to ERS during a U.K. tax year:

- Grants of rights to acquire shares or other securities (e.g., options or long-term incentive plan awards);
- Acquisitions of shares or other securities; and/or
- The lifting of restrictions (such as a risk of forfeiture) from shares or other securities.

These obligations also apply to certain other reportable events involving shares or other securities which are acquired, or treated as having been acquired, by reason of employment. **This applies regardless of where the issuing company is incorporated, resident, or listed.**

Events that occur outside a formal employee share plan, such as an acquisition of shares or grant of options during a change of control or other transaction, can also give rise to reporting obligations.

Reporting U.K. Tax-Advantaged and Non-Tax-Advantaged Plans

Separate reporting obligations arise in relation to non-tax-advantaged plans (or other arrangements), and each type of U.K. tax-advantaged employee share plan. Note that plans which attract non-U.K. tax advantages, such as U.S. qualified employee stock purchase plans or Irish Approved Profit-Sharing Schemes, will be 'non-tax advantaged' for U.K. reporting purposes.

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For non-tax-advantaged arrangements, no reporting obligations should arise in relation to ERS awards held by individuals who were not U.K. resident and had no U.K. duties both (i) on the date of grant, and (ii) throughout the vesting period of the relevant award. However, share-based awards should be reported where the employee had U.K. duties at any point in time over the vesting period of the relevant award.

Steps for Employers to Consider

Confirm Whether Registration Is Required

To file the relevant returns, employers that have a reporting obligation for 2022/23 must register each plan or other arrangement with HMRC's ERS Online Services (part of HMRC Online Services), if this has not already been done.

U.K. tax-advantaged plans (which are known as CSOP, SAYE, SIP, and EMI plans) must each be registered separately. Other arrangements (including plans that do not qualify for U.K. tax advantages) can be included under a single registration.

For U.K. tax-advantaged CSOP, SAYE, and SIP plans established during 2022/23, on or before 6 July 2023, employers must submit an online declaration that the conditions for tax-advantaged status are met. If this is not done, the relevant tax advantages may be lost.

Employers should review their ERS return registration status to confirm which registrations (if any) were made in previous years and whether any additional registrations are required.

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As new registrations can potentially take some time, it is preferable to begin the process in April or May, to allow registration to be completed in good time to allow all relevant submissions to be made on or before 6 July 2023.

Employers are advised to consult with their qualified tax professionals to confirm their reporting obligations and understand the registration process. They may also wish to seek assistance with completing and submitting the annual ERS returns.

Note though that registration **must** be performed by the employer (i.e., whilst agents can submit ERS returns on behalf of an employer, they cannot register a relevant plan or other arrangement on the employer's behalf).

Review Information Required to Complete Returns

ERS return templates and associated HMRC guidance are available by clicking [here](#).

Employers should download and review any required returns' templates as soon as possible to confirm whether they hold the information required to complete and submit those returns by the deadline.

Note that from 6 April 2023, **the number of data fields in the ERS returns for which an entry is mandatory will increase**.² This includes now-mandatory reporting of the employer's PAYE reference (the employer should be the company that has the obligation to operate payroll withholding in relation to the relevant employee), whether payroll withholding was operated on the share-based award, and the employee's NINO or, where no NINO has been issued, a special code based on the employee's date of birth and the reason why a NINO has not been issued.

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Changes to which data fields on the ERS returns require a mandatory entry will mean that employers that have not previously completed all fields in their ERS returns as a matter of course will need to make sure they can source the additional now-mandatory information for 2022/23 and subsequent tax years. ERS returns that do not include the newly-mandatory information could be rejected on submission. HMRC will publish further technical guidance on these changes during February 2023.

Employers should also determine that they are satisfied with their data protection compliance positions (both U.K. and non-U.K.) in relation to employee share plans, particularly where employees' personal data will be transmitted internationally to allow completion of the ERS returns.

Late Filing Penalties

Where a plan or other arrangement has been registered with ERS Online Services (either for this year or for the previous tax year), and the employer does not submit an ERS return by 6 July 2023, an automatic penalty of GBP 100 per registration will arise.

Additional penalties will arise where submissions remain outstanding by 6 October 2023 (an additional GBP 300) and 6 January 2024 (a further GBP 300). HMRC has discretion to impose further penalties in relation to any returns that remain outstanding after 6 April 2024.

If no reportable events occur during a tax year in relation to a registered plan, a 'nil' return must be submitted by the filing deadline to avoid a penalty.

Registrations that are no longer required should be closed to avoid penalties for inadvertent non-filing arising.

Should Any Employee Trusts also Register with HMRC?

Employee trusts, including those established to operate employee share plans, are required to register with HMRC's Trust Registration Service (TRS) if they incur certain U.K. tax liabilities (e.g., a Stamp Duty Reserve Tax charge on making an unconditional agreement to acquire shares in a U.K.-registered company). Some employee trusts **without** a relevant U.K. tax liability are also required to register with the TRS if certain conditions are met. This separate reporting obligation and the relevant time limits for registration are summarised in our *GMS Flash Alert* [2022-083](#), 15 April 2022.

FOOTNOTES:

1 For additional information, see HMRC, "[Tell HMRC about your employment related securities](#)" (published 1 January 2014 and last updated 3 November 2022).

2 See HMRC, "[Changes to the Employment Related Securities \(ERS\) end of year return templates from 6 April 2023](#)," *Employment Related Securities Bulletin 47* (January 2023).

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