

Form 42 share plan reporting

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All companies that operate employee share incentive arrangements in the UK (other than HM Revenue & Customs (**HMRC**) approved incentives), or that have directors or employees who simply acquire shares in the company, must complete an annual tax return, Form 42, by **6 July 2011**. Failure to meet the obligations may result in **significant penalties**.

Who needs to file a Form 42?

The following entities must file a Form 42 with HMRC:

- The employer (whether a UK or an overseas company)
- The person who awarded the securities or options (e.g., employer benefit trust), or
- The person who issued the securities or options (e.g., parent company)

Usually, the UK employer discharges the reporting obligation on behalf of the corporate group.

When do you need to complete a return?

A Form 42 will need to be filed if, during the relevant tax year (6 April 2010 to 5 April 2011), any of the following events occurred:

- Grant or exercise of options
- Award of shares, restricted stock or conditional share awards
- Vesting of restricted stock or shares
- Surrender of options for consideration

It does not matter whether there was a tax charge at the same time.

You may or may not have received a notification to file a Form 42 from HMRC. Even if you have not received a notification, if any of the above events have occurred during the relevant tax year, you must file a return by **6 July 2011**. If you have received a notification from HMRC but there have been no relevant events, you must still file a nil return.

Online filing is not available for Form 42s, so you will need to file a hard copy with HMRC.

Why is it important?

HMRC has the power to levy significant penalties for a failure to file a Form 42 by **6 July 2011** or for **inaccurate returns**. HMRC has considerable powers to penalize companies that fail to comply but will usually limit penalties to 100 percent of the tax payable.

A failure to comply will increase the likelihood of a full PAYE audit.

Particular issues

- Form 42s are complex and it is very easy to underestimate the time and resources required to file an accurate return.
- **Non-UK companies** often fail to meet their obligations because of either the failure to understand their UK reporting obligations or not getting to grips with the complexities of the Form. There are also particularly difficult reporting issues relating to internationally mobile employees.
- Unlike fully listed companies, AIM companies are required to report all market transactions that involve their employees or directors. Most companies will not be aware of the general share dealings of their workforce and so will need to have procedures in place for internal reporting.

What should you do?

- If you have received a Form 42 notification, you should ensure that the return is submitted by the deadline of **6 July 2011** (or if the notification was sent out on or after 8 June 2011, 30 days from the date of the notification).
- If you have not received a Form 42 notification, you must actively consider if any of the events listed above have occurred during the 2010/11 tax year (i.e., 6 April 2010 to 5 April 2011), and file a Form 42 by **6 July 2011**.

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