



Employment-related Securities: the Form 42 requirement



Preliminary

A Form 42 is an annual tax information return form. It is primarily used by HMRC to check that the correct amount of tax has been paid by employers and employees in respect of 'reportable events' concerning shares and securities acquired by employees.

The requirement to file a Form 42 has existed since the 2003/04 tax year. However, the Form is complex and errors in its completion remain very common. There are also many employers which fall foul of the reporting obligations altogether as they are unaware of the obligation to submit the return.

This fact sheet is intended to provide you with some preliminary guidance on the completion of a Form 42. However, as the rules regarding the Form are detailed you may need to seek further guidance through HMRC or a professional adviser.

Whose responsibility is it to file a Form 42?

A Form 42 can be filed by an employer, a host employer, (that is, the person treated as the employer), a person from whom securities or options have been acquired and a person by whom securities were issued.

A parent company can complete a Form 42 for all employees in group to simplify compliance.

How do I know if I need to file a Form 42?

There are two circumstances in which you will need to file a Form 42:

1. you have been sent a Notice to File Form 42 by HMRC; or
2. a 'reportable event' has occurred in the previous tax year.

If you have been sent a Notice to File Form

42, you must submit the Form whether or not a 'reportable event' has occurred (although where no 'reportable events' have occurred, you can simply file a nil return).

What information is disclosed on a Form 42?

In general, a Form 42 is used to provide HMRC with information about 'reportable events' concerning securities and shares acquired by employees and 'reportable events' in relation to securities or options that are employment related.

It is worth noting at this early stage that tax-approved share schemes have their own separate annual return forms on which to record events:

- SAYE (Save As You Earn) schemes - Form 34;
- CSOPs (Company Share Option Plans) - Form 35;
- SIPs (Share Incentive Plans) - Form 39; and
- EMIs (Enterprise Management Incentive schemes) - Form 40.

Securities is widely drawn to include shares, debentures and loan stock.

A security or option is employment related if it is acquired because of employment or is deemed to have been acquired because of employment. Securities and options are deemed to have been acquired because of employment when the opportunity to acquire them is made available to employees by an employer or by a person connected with an employer. An office-holder (director or secretary) is an employee for these purposes.

A security ceases to be employment-related immediately before the death of an employee or 7 years after the employee leaves employment.

What is a 'reportable event'?

The rules determining whether or not an

event is reportable are complex and detailed. These are the common events that are disclosed on a Form 42, however, note that this list does not cover all reportable events:

- all transactions in the shares of an employer or related company carried out by an employee or a connected person; including:
 - the issue or transfer of shares or other securities;
 - the grant of share options or of other rights to acquire shares;
 - the exercise of share options or other rights to acquire shares;
 - the assignment or release of taxable securities options for consideration;
 - a rights issue or a bonus issue to employees by an employing company. However, a rights issue or bonus issues will not be reportable if the employer is a company listed on a recognised stock exchange and the opportunity to acquire unrestricted shares or securities is made available to all shareholders including employee shareholders;
- an event which is a 'chargeable event' in relation to restricted securities and restricted interests in securities; or
- an event which is a 'chargeable event' in relation to convertible securities and interests in convertible securities.

The 'chargeable events' in relation to restricted securities and convertible securities are listed in the HMRC guidance, a link to which is provided below. These include the removal or variation of a restriction relating to a restricted security and the release for consideration of the entitlement to convert convertible securities into securities of a different description.

The following are examples of events that are not reportable on a Form 42:

- the acquisition of shares on the incorporation of a company by a director or prospective director where all subscriber shares are acquired at nominal value, no other securities are acquired and the shares are not acquired in connection with other employment;
- the allotment of shares in a newly



incorporated company prior to it commencing trading where the additional shares are acquired by a director or prospective director or by a person who received some or all of the initial subscriber shares, the shares were acquired at nominal value and the share were not acquired by reason of or in connection with other employment;

- the acquisition of shares by employees in the normal course of a domestic, family or personal relationship of the person transferring the shares e.g. shares in a family company passing to the next generation. It is for individual making the transfer to determine whether it is made for purely personal reasons; and
- the grant or award of shares under HMRC approved schemes.

Which sections of Form 42 do I need to complete?

The index on page 2 of the Form helps to identify which sections of the Form you will need to complete. You only need to complete the sections that deal with reportable events that have occurred in the previous tax year.

Briefly speaking, section 1 of the Form deals with options over shares and securities, section 2 deals with the acquisition of shares and securities and section 3 deals with events occurring after the acquisition of shares and securities. It is worth reading the notes for each section as some questions can be ignored for certain events.

Market Value

The market value of a share or security is the price which it might reasonably be expected to fetch on a sale in the open market. Where Form 42 asks for the market value of a share or security, you do not need formally to agree a valuation with HMRC. The market value for the purposes of the Form is the best available value at the time of the transaction.

By when must the Form 42 be filed?

A Form 42 is normally due by 6 July following the end of tax year to which it relates, or, if later, within 30 days of the date of issue of a Notice to File Form 42.

How do I file a Form 42?

There are three ways to file a Form 42:

1. in hard copy – the Form can be printed from the HMRC website (or by clicking [here](#)) and then completed. It can also be supplemented with additional spreadsheets as required.
2. electronically – the Form is available on HMRCs Employer’s CD-ROM. HMRC will send copies of this out free of charge but the Form still needs to be printed after completion and filed in paper format.
3. prepare your own spreadsheet or letter but ensure that this contains all of the required information as set out on the Form otherwise the return will be

rejected and returned to you.

HMRC is hoping to introduce intelligent online filing by April 2015.

What happens if I do not file a Form 42?

HMRC have the power to impose penalties for a failure to file a Form 42 by its due date. However, HMRC have stated that these penalties will not be imposed automatically. HMRC will usually issue two failure to file warnings before the matter is referred to a Tribunal. The Tribunal then determine whether or not a penalty should be imposed.

Where can I find more help?

HMRC produced a detailed guide in July 2007 entitled ‘Employment-Related Securities - A Guide to completing Form 42’. This guidance contains detailed notes, worked examples and is available on the HMRC website or, alternatively, [here](#).

It is worth noting that HMRC will also provide advice on completing the Form over the telephone. In the run up to the filing deadline, however, the line is often very congested and it may take a while to get through to an adviser.



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