

June 2008

A legal update from Dechert's Tax Group

## Reporting Obligations – Employment Related Securities

The 6 July 2008 deadline for submitting Form 42 is fast approaching. This form requires the 'responsible person' (usually the employer, although one company is able to take responsibility for a group) to report events concerning employment-related shares and securities occurring in the previous tax year. As 6 July 2008 is a Sunday, the form will need to be filed before the weekend.

### The Requirement to Submit a Form 42

A responsible person will need to complete a Form 42 where:

- it receives a 'Notice to File a Form 42' from HM Revenue & Customs ("HMRC"), even where there is nothing to report; or
- reportable events have occurred during the previous tax year.

Reportable events broadly cover any dealing in options or securities in the company by an employee or office holder or a relative of an employee or office holder. Events are reportable even when they occur for full market value, without restrictions and through an individual acting in a private capacity, in which case the responsible person may not even be primarily aware of the event. Furthermore the reporting obligations may apply after an employee has left employment, as securities only cease to be 'employment-related' seven years after the employee has left.

Penalties may apply in two cases; firstly for failing to report by 6 July and secondly for failing to comply with a notice to make a return. Each of these carries a £300 initial penalty plus a maximum £60 daily fine for each day the information or return remains outstanding. HMRC can apply either or both of the penalties.

### Exceptions

Certain exceptions apply so that not all events concerning employment-related securities will need to be reported.

#### Founder shares

The exception in relation to founder shares covers the acquisition of shares directly on incorporation or the transfer of shares from a company formation agent or other person forming the company such as solicitors and accountants. These exceptions will only apply if certain conditions are met. The shares must be issued at nominal value and they must be issued to a director or a prospective director. HMRC has concluded in its guidance that 'the majority of newly incorporated companies should meet the above conditions and will *not* have to complete Form 42 in respect of the founder shares'.

#### Circumstances where a report may not be required

HMRC also refers to a further list of circumstances in which disclosure *may* not be required. These include shares for share exchanges, rights issues, bonus issues, scrip dividends, transfers in the normal course of domestic or personal relationships and shares acquired independently, through a broker for example, by employees or directors. The last case applies where the relevant shares are listed on a recognised stock exchange (which includes the London Stock Exchange and PLUS Market but not AIM) and the opportunity to acquire the shares is open to all employees. HMRC's guidance runs through each of these and details when reporting will not be required (see pages 9 to 12 of HMRC guidance).

## Share Options and Approved Schemes

It is not necessary to list individual share options on Form 42—simply a summary of all of options granted. It is also worth bearing in mind that each of the HMRC-approved share option schemes (Save as You Earn schemes, Company Share Options Plans and Share Incentive Plans) have their own reporting forms and therefore need not be detailed on Form 42. In relation to Enterprise Management Incentives, only options granted in excess of £100,000 should be reported on Form 42.

necessary to have a formally agreed valuation. HMRC guidance (at page 49) states that simply the 'best available value at the time of the particular transaction' will suffice, although prescribed methods are set out for securities listed on a recognised exchange. Nevertheless, if this value is different from the value upon which PAYE/NIC was operated, then a brief note should be sent explaining the difference.



This update was written by Mark Stapleton (+44 20 7184 7591; mark.stapleton@dechert.com).

## Market Value

It may be useful to note that where market values are required to be entered on the form it is not

---

## Practice group contacts

For more information, please contact one of the lawyers listed, or the Dechert lawyer with whom you regularly work. Visit us at [www.dechert.com/tax](http://www.dechert.com/tax).

### Mark Stapleton

London  
+44 20 7184 7591  
mark.stapleton@dechert.com

### David Gubbay

London  
+44 20 7184 7420  
david.gubbay@dechert.com

### Daniel Hawthorne

London  
+44 20 7184 7327  
daniel.hawthorne@dechert.com

---

Dechert  
LLP

[www.dechert.com](http://www.dechert.com)

Dechert is a combination of two limited liability partnerships (each named Dechert LLP, one established in Pennsylvania, US, and one incorporated in England). Dechert has over 1,000 qualified lawyers and a total complement of more than 1,800 staff in Belgium, France, Germany, Hong Kong, Luxembourg, the UK, and the US.

Dechert LLP is a limited liability partnership registered in England & Wales (Registered No. OC306020) and is regulated by the Solicitors Regulation Authority. The registered address is 160 Queen Victoria Street, London EC4V 4QQ, UK.

A list of names of the members of Dechert LLP (who are referred to as "partners") is available for inspection at the above address. The partners are solicitors or registered foreign lawyers. The use of the term "partners" should not be construed as indicating that the members of Dechert LLP are carrying on business in partnership for the purpose of the Partnership Act 1890.

Dechert (Paris) LLP is a limited liability partnership registered in England and Wales (Registered No. OC332363), governed by the Solicitors Regulation Authority, and registered with the French Bar pursuant to Directive 98/5/CE. A list of the names of the members of Dechert (Paris) LLP (who are solicitors or registered foreign lawyers) is available for inspection at our Paris office at 32 rue de Monceau, 75008 Paris, France, and at our registered office at 160 Queen Victoria Street, London, EC4V 4QQ, UK.

Dechert LLP is in association with Hwang & Co in Hong Kong.

This document is a basic summary of legal issues. It should not be relied upon as an authoritative statement of the law. You should obtain detailed legal advice before taking action. This publication, provided by Dechert LLP as a general informational service, may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

© 2008 Dechert LLP. Reproduction of items from this document is permitted provided you clearly acknowledge Dechert LLP as the source.

---

**EUROPE** Brussels • London • Luxembourg • Munich • Paris • **U.S.** Austin  
Boston • Charlotte • Hartford • Newport Beach • New York • Philadelphia  
Princeton • San Francisco • Silicon Valley • Washington, D.C. • **ASIA** Hong Kong