

Global Employer Services (GES)

Global Rewards Update: United Kingdom – Form 42 submission: July 6, 2013

May 2013

Background

HM Revenue and Customs (HMRC) require companies to report any employee-related stock or stock option transactions that have taken place during the UK tax year (April 6–April 5) and may fall into the UK income tax net. The relevant information must be reported on a “Form 42,” which must be submitted by July 6 following the end of the UK tax year. Penalties can arise if companies fail to meet this obligation. A wide range of employee related stock transactions should be included on the form.

Relevant to non-UK parent companies

A reporting obligation arises in respect of employees who reside or work in the UK, regardless of where the company making stock awards is established. Therefore, if non-UK-based parent companies are making stock awards to UK tax resident employees, or to employees who may be subject to UK tax or social security on some or all of their gains on stock awards, then they will need to complete a Form 42. In our experience, many parent companies are unaware of this obligation.

Impact of late filing

HMRC can charge penalties for late submission. This includes an initial penalty of £300 per reportable event (and each stock option exercise, for example, is a reportable event). There can be further penalties of up to £60 per day. Penalties for incorrect returns can also be up to £3,000.

In addition, late or incorrect submissions affect the tax risk profile of the company; HMRC are more likely to focus their attention on those companies that miss filing deadlines or make errors in their reporting.

“Reportable events”

The definition of reportable events in the context of employee-related stock transactions is extremely widely drawn and can include the grant and exercise of stock options, the award and vesting of restricted stock units, and even the acquisition of stock at market value (i.e., even if no income tax or social security charge will arise). Therefore, any activity in this area may well trigger the need to submit a Form 42.

In our experience, particular difficulty can arise in respect of:

- Lack of communication between parent company and UK subsidiary, so that the UK company is unaware of stock awards being made to UK employees
- The treatment of stock awards held by internationally mobile employees
- The treatment of stock awards on a corporate transaction

Where there are no reportable events in a tax year but a company has been notified of a requirement to file a return, companies are still required to file a Form 42 “nil return” with HMRC by July 6.

(Where a parent company has an HMRC “approved” stock plan in place in the UK, then a different form will need to be completed).

Submission of the form

A “responsible person” must submit the Form 42. Normally this will be an officer of the UK employer or the parent company. An officer of that company must sign the form; it cannot be submitted electronically.

Deloitte’s view

A Form 42 reporting obligation for non-UK parent companies can arise where stock awards are held by:

- UK employees in a non-UK-based parent company
- Non-UK employees in respect of duties or workdays in the UK
- Internationally mobile employees

In our experience, this can also highlight errors in the UK tax treatment of stock awards. This is an area of particular focus for HMRC.

Action

- Non-UK parent companies operating stock or stock option plans for UK tax resident employees should consider whether a Form 42 reporting obligation has been triggered.
- Non-UK parent companies should be communicating with UK subsidiaries about whether any employee-related stock or stock option transactions have taken place during the UK tax year, and who will be responsible for submitting the Form 42. Communication between the parent company and the UK subsidiary will also help to ensure that UK income tax and social security is being applied correctly to the stock awards.

People to contact

For assistance with this matter, or any other issue related to the operation of your global rewards plans, please contact your local Deloitte global rewards consulting services adviser or email us at

<mailto:globalequity@deloitte.com>, and a global rewards consultant will contact you.

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