Tax Talk

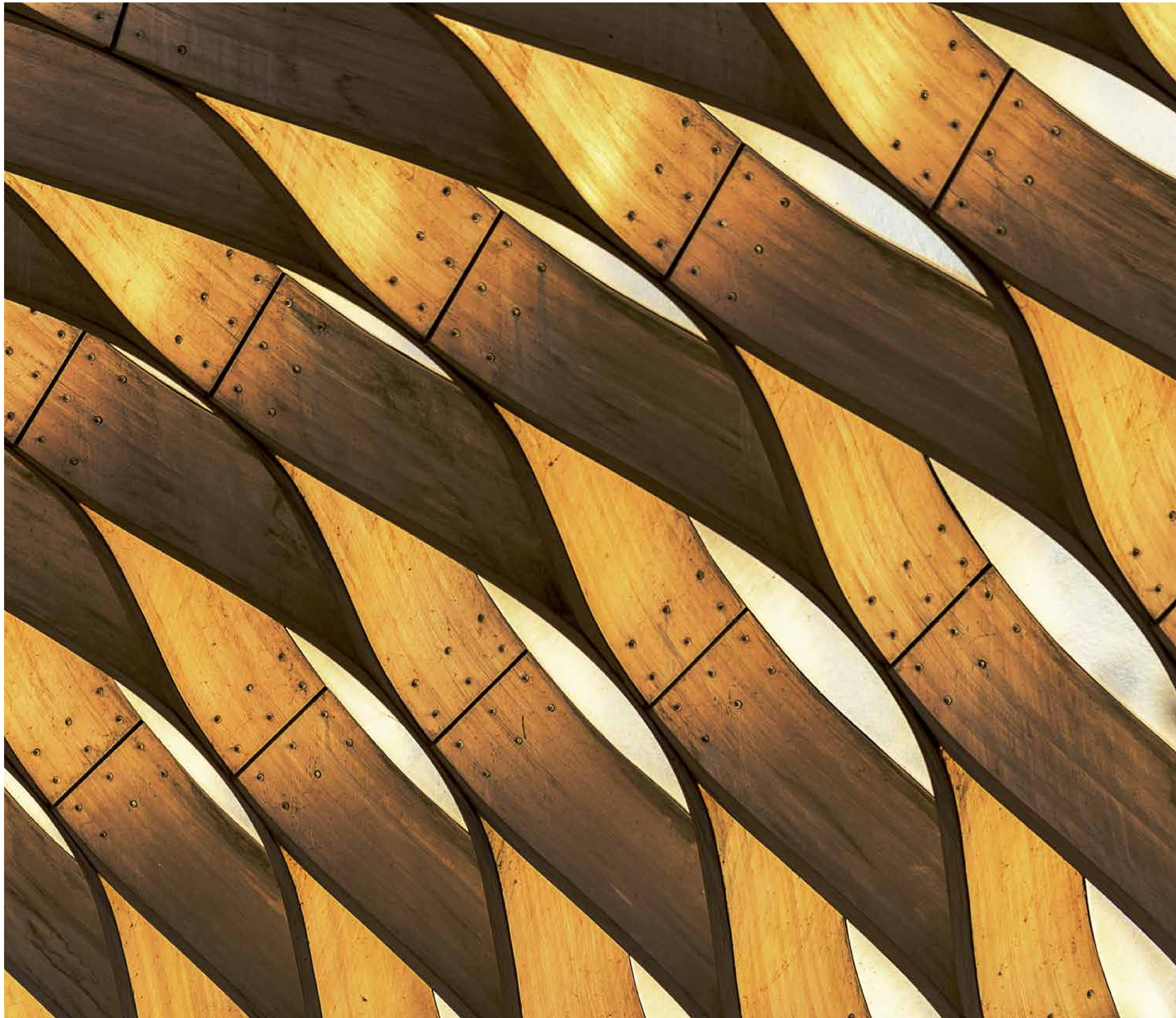
Simplifying the complexities of Tax

May 2021

PKF

pkf-l.com

Tax Talk: May



The Enterprise Investment Scheme (EIS)

Earlier this year, the Office for Budget Responsibility suggested that up to £180bn of "excess savings" had been recorded by households over the course of the pandemic, a value that has likely increased since. As we return to normality, struggling small businesses are seeking to raise investments to grow their businesses, and there are a vast number of start-up companies also seeking funding to pursue new opportunities.

If only there were a way to align these excess savings with those businesses who need funds, in a manner that potentially gives significant tax benefits…

The schemes

EIS has been in place since 1993, having replaced the Business Expansion Scheme which gave similar reliefs. The Seed Enterprise Investment Scheme (SEIS) is a more recent relief (2012) for investments in even smaller stage companies. The tax reliefs offered to qualifying investors in these companies are as follows.

Income Tax

- An individual can claim 30% Income Tax relief on an annual investment into EIS of up to £2 million. This can be claimed in the tax year of investment or carried back into the previous tax year.
- For SEIS, this tax relief is increased to 50%, however, the annual investment is limited to £100,000 in any tax year. Like EIS, this relief can be carried back to the previous year.
- EIS/SEIS shares must be held for a minimum of 3 years, otherwise any tax relief received must be repaid to HMRC. After 3 years, the tax relief is permanent, whatever happens to the Company thereafter.

Capital Gains Tax (CGT)

- Once EIS/SEIS investments have been held for three years, CGT will not be due on any gain at the time of a subsequent disposal.

CGT deferral/reinvestment

- CGT due on a different asset can be deferred by the amount subscribed into EIS shares. This can be allocated to assets disposed of 36 months prior to, or 12 months after the investment into EIS.
- This gain is frozen and will become chargeable at a later date, for example when the EIS shares are sold.
- SEIS reinvestment relief does not defer the gain, instead it exempts an amount of the gain from CGT provided the shares are held for at least 3 years.
- The maximum gain that can be exempt is 50% of the qualifying SEIS investment.

Inheritance Tax (IHT)

- Shares held in EIS/SEIS companies will normally qualify for 100% Business Property Relief (BPR) if held for at least 2 years.
- A BPR qualifying asset will not be liable to IHT at death.

Loss relief

- If an EIS/SEIS investment performs poorly and you realise a loss, you may be able to claim loss relief.
- The capital loss is reduced by any income tax relief already obtained under EIS or SEIS which has not been withdrawn.
- The capital loss on EIS/SEIS can be claimed against income in the tax year of disposal, the previous tax year, or against chargeable gains provided all qualifying conditions are met.

What's the catch?

Investments in EIS and SEIS businesses are inherently a significant investment risk. The reliefs exist because these companies struggle to raise funds to grow their business due to the significant risks surrounding their businesses.

- Only businesses carrying on certain trades qualify for EIS and SEIS. Trades that carry a low risk of failure are excluded from the scheme.

The Enterprise Investment Scheme (EIS)

- You cannot be connected with the company that you want to invest in. That means that neither you nor certain family members can be employees, and together you can't own more than 30% of the company.
- The relief is targeted at small and growing businesses only and these businesses must prove to HMRC that the investment funds will be wholly used against costs in the first two years after being raised.
- EIS and SEIS shares can only be issued in independent companies, and generally where the liquidity of the shares is low – you may struggle to find a buyer for your shares in the future unless there is a takeover or IPO.
- Companies issuing shares under SEIS or EIS cannot provide any form of risk protection to the investor in respect of their capital. If they do, relief is not available. Accordingly, only Ordinary Shares issued can qualify for relief.

The relief exists to effectively discount the cost of investment for an investor in respect of these inherent risks. However, serial EIS investors will still expect many investments to fail, and lose their money, for every Unicorn that they find.

Do your homework

If you're considering making investments in EIS companies, as with any investment opportunity, you need to speak with an independent financial advisor to make sure that the decision is a right one. Some tips are as follows:

- Never invest more in EIS shares than you can afford. If you have cashflow issues in the future, selling your EIS shares to raise funds may not be possible.
- Don't let the tax relief blind you from the investment potential of the company. An investment into a failing company is still a bad investment, even with an Income Tax discount.
- You can't get more Income Tax relief in a tax year than Income Tax you are otherwise liable to. You may therefore need to spread significant investments over multiple tax years.
- Check that the Company understands their responsibilities in respect of EIS. EIS relief has many conditions and processes for the company to follow, and can fail where a Company doesn't follow the rules, with the Investors losing their tax reliefs.
- If EIS relief is important to you, check that the Company qualifies. The company can seek advance approval from HMRC by setting out the relevant facts of the company. If a company received this clearance some time ago, check that it remains relevant. The last thing you want is to invest thinking you'll get a tax repayment, only to have it refused.

How we can help

If you're considering making investments into EIS Companies, and you want to know how this will affect your tax position, or whether the Company qualifies – speak to us and we can help. Note however that we cannot assist you in making an investment decision.

And if you're running a business that is looking for new investment, watch out for a future tax talk article that considers EIS relief from the Company viewpoint.

Chris Riley
Partner, Head of Tax

+44 (0)20 7516 2427
criley@pkf-l.com

Share reporting: don't get caught out

If you provide options, shares or other securities to your employees, you must file details with HMRC by 6 July. Here's what you need to know.

Giving away shares or share options in your company is often an excellent way to incentivise employees. But you need to think beyond the initial transaction and immediate tax implications. There are also annual reporting requirements, and HMRC won't remind you about them. The penalties for forgetting these requirements (or not knowing they exist) can soon rack up.

Does this affect me?

As the employer, you need to tell HMRC about all reportable events in relation to options, shares and other securities that individuals have obtained by reason of their employment. Reportable events are not the same as chargeable ones – even if no tax is due, they may still need to be declared.

It's worth noting that transactions involving incoming employees are caught, as are those with former employees who left during the last seven years. Not being paid a salary is not a get-out either – the rules still apply to otherwise unremunerated directors.

If you have given equity or options to non-resident individuals, you may still need to report them, depending on whether they perform any UK duties for the company.

The reporting requirements are quite wide-ranging.

What do I need to do?

If you think you have a reporting obligation, register the company for a Government Gateway account as soon as possible, add the PAYE service and register any share schemes. If you have made a furlough claim previously, you will already have a Government Gateway account with PAYE set up. Otherwise, you might need to request an employer's ID online for the first time. This involves a letter being sent to you in the post, which can take time to come out, so don't delay.

Once you have registered the company for Employment Related Securities (ERS), with your approval we can get ourselves appointed as your agent and deal with the necessary electronic paperwork for you.

To do this, please be aware, there is another administrative stage that involves waiting for a letter to turn up in the post. You must register to file, and authorise an agent to file on your behalf, as soon as possible.

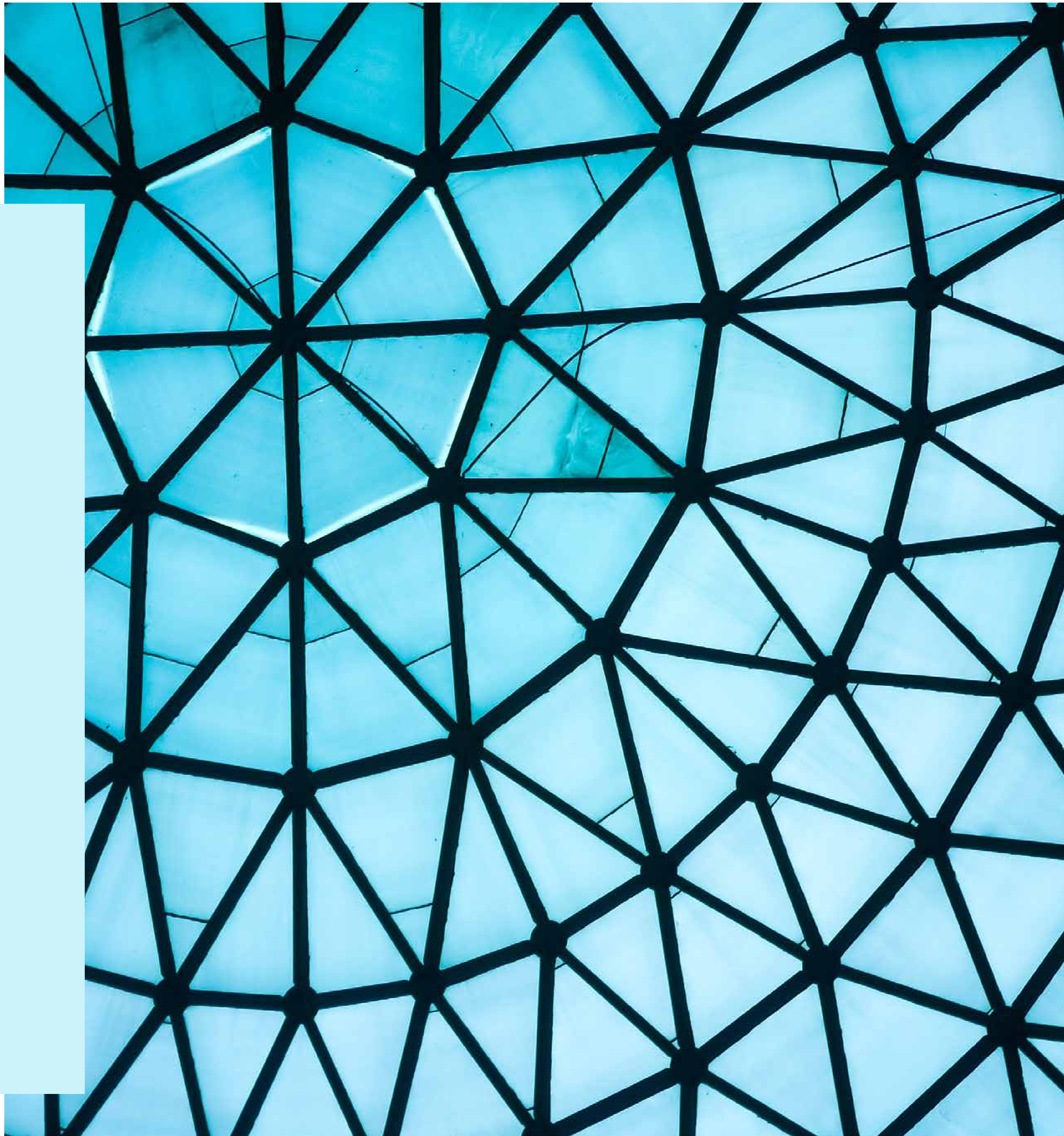
What do I need to report?

Good news: it's not usually necessary to report the following events:

- allocation of initial subscriber shares in newly incorporated companies
- shares in newly incorporated companies acquired directly from the formation agents
- shares in listed companies acquired independently (e.g. through a broker)
- rights issues, bonus issues and scrip dividends

Most other events (even if they don't create an immediate tax charge) will need to be reported.

Share reporting: don’t get caught out



What needs to be filed, and by when?

Tax-advantaged schemes like Enterprise Management Incentive (EMI), Share Incentive Plan (SIP), Save As You Earn (SAYE) and Company Share Option Plan (CSOP) all have their own special forms. For everything else that needs to be reported, you will need to complete a generic form called an ERS Return. All forms must be filed online by 6 July 2021.

HMRC didn’t give any extensions last year, even at the full height of lockdown, so you shouldn’t assume any concessions for this year.

What happens if I get it wrong?

If you miss the deadline, anyone treated as the employer and – if different – the person from whom securities or options were acquired, will be subject to penalties.

There will be an initial fixed-rate penalty of £100 if you don’t file the 2020/21 return by 6 July 2021. Further fixed-rate penalties of £300 will arise if still outstanding on 6 October 2021 and 6 January 2022, bringing total flat-rate penalties to a maximum of £700. If a return is still outstanding after 6 April 2022, there may be daily penalties of £10 a day.

On top of these, HMRC can also impose penalties of up to £5,000 per return if a filed return contains inaccuracies.

How we can help

Determining which transactions are caught by the rules can be tricky. We can advise whether you need to make a report and either file on your behalf or prepare the paperwork you need and talk you through online submission.

Please note, if you are an existing listed audit client and we are restricted by the FRC’s Revised Ethical Standard from preparing your corporation tax returns, we may still be able to advise on ERS reporting, depending on the specific circumstances.

Please get in touch with your usual PKF contact if you think ERS may be relevant to your company.
to penalties.

Shona Barker
Senior Manager

+44 (0)20 7516 2477
sbarker@pkf-l.com

How to report coronavirus related benefits

Many businesses provided new benefits to employees as they adapted to the coronavirus crisis. Daniel Kelly explains how such virus-related benefits will be taxed and should be reported to HMRC.

The 2020/21 tax year imposed on us many changes to the way we live and work, as the country tried to contain the spread of coronavirus. Needing to act quickly, businesses either offered their people new benefits or made changes to existing arrangements, as the country endured three national lockdowns.

A new way of working

Successive lockdowns and a consistent instruction from government to “work from home if you can”, meant many businesses found themselves with staff unprepared for an extended period of remote working. While most employees already had a laptop, many lacked other essential equipment needed for sustainable home-working. Once it became clearer how long employees might need to be home-based, many companies provided or paid for office equipment to help their employees improve their home working environment.

Equipping the home office

In normal times, the tax and NIC position and reporting requirements would vary depending on whether an employer provided office equipment directly (company-owned items) to employees or reimbursed them for the cost of equipment they had bought themselves.

Shortly into the first national lockdown, HMRC announced a concessionary change which allowed employers to reimburse employees the ‘qualifying expense’ of office equipment for their home without incurring a tax or NIC charge.

To be a qualifying expense, the equipment must be used primarily for business purposes - with no significant private use by the employee. Items such as an office desk, office chair, monitor and auxiliary supplies usually provided at a place of work would be considered ‘qualifying’. The purchase of a new dining room table to provide more work space or a lounge lamp to improve lighting would not qualify, as it would be difficult to argue their private use was insignificant.

Do I report this?

If the equipment (or supplies) meets the criteria for a qualifying expense, it will be non-taxable, regardless of whether you provided it directly to the employee or reimbursed them the cost of buying it themselves.

These non-taxable expenses don’t need to be reported to HMRC. But, as always, we recommend you keep good records of such expenses to substantiate why you have treated them in this way.

Any non-qualifying expenses you reimburse the employee are taxable and should either be reported via payroll (with tax and NIC deductions) at the time of reimbursement or included as part of your 2020/21 PAYE Settlement Agreement - if you wish to pay the tax on these on behalf of your employees. See below for further information.

How to report coronavirus related benefits

What happens when home working ends?

For many companies, home working in some form will become a permanent feature of how their business operates. For others, it will end and staff will return to the office as soon as is practical and safe - as we emerge from what we hope is the final national lockdown.

Where equipment is no longer needed for home working (or when an employee leaves the company), the tax treatment depends on what happens to that equipment afterwards.

Equipment you've provided as the employer is considered a company-owned asset and must be returned to you to prevent any tax arising on the transfer of an asset to the employee.

But equipment bought by the employee, where you reimbursed the cost, is never owned by the company. So, subject to any company policy, employees can keep it and no tax or NICs will arise.

Connecting the home office

For home working to be possible, your employees require a broadband connection which at least delivers reasonably high speed internet. You may have agreed to meet the cost of home broadband, recognising that it will be used a significant amount for business purposes.

Where employees already had broadband before working from home as a result of coronavirus (and it is difficult to imagine many did not), any reimbursement for the existing or an improved internet connection is taxable.

Only where an employee had no broadband connection before working from home can the cost of installation and the ongoing contract be reimbursed tax-free, and only if private use is limited.

Essential travel to the office

At the height of the first wave of the pandemic, fear was a much bigger factor than in later periods. During this time, many employees were reluctant to travel on public transport even when they needed to be in the office. You may therefore have paid for their expense of travelling by car (mileage and parking) or taxi to the office.

Even though there was good reason for paying employees' travel expenses, stints between home and permanent place of work are still assessed as private travel and such expenses are taxable. Exemptions for late night taxis and travel to a temporary workplace apply as normal, and a specific exemption relating to cancelled car-sharing arrangements was introduced.

PAYE Settlement Agreements (PSA)

Taxable reimbursements for employees' broadband or home-to-work travel expenses should be reported through the payroll or included in your PSA calculations for 2020/21.

A PSA is an enduring agreement (form P626) made with HMRC, for employers to settle certain tax liabilities on behalf of their employees on certain benefits. A PSA carries forward indefinitely for you as the employer until either you or HMRC cancels the agreement - or you choose to apply for a new agreement to include additional benefits on which to settle your employees' tax liabilities.

For the 2020/21 tax year, if you already have a PSA, you do not need a new P626 for any additional items that were provided as a direct result of the coronavirus pandemic, as you can include these in the PSA return you submit to HMRC.

If you do not have a PSA with HMRC but would like to enter into one for 2020/21 in order to report centrally any taxable expense payments made due to the pandemic, you must apply to HMRC no later than 5 July 2021.

You may want to include other expenses or benefits on which you wish to pay your employees' tax such as staff entertainment, long service awards and staff gifts and the same application date deadline applies.

Daniel Kelly
Senior Manager

+44 (0)20 7516 2461
dkelly@pkf-l.com

About PKF
Simplifying complexity for our clients

PKF is one of the UK's largest and most successful accountancy brands.

We provide a full range of audit, accountancy, tax and advisory services, and are experts at simplifying complexity – we're particularly well-known for working with large, high-profile businesses with challenging issues in fast-moving and highly technical areas.

We are also an active member of PKF International, a global network of legally independent accounting firms that gives us an on the ground presence in 150 countries around the world.

PKF in the UK

8th largest Audit practice in the UK in the latest Accountancy Daily rankings

£150 million annual fee income

2,030 UK partners and staff

7th ranked auditor of listed companies in the UK

Our tax services
At a glance

"By bringing together the extensive expertise and experience of our tax specialists we can provide a fully rounded service that offers excellent value for money."

We offer comprehensive tax compliance and advisory services to a range of clients, both in the UK and globally, helping them find their way in the increasingly complex world of tax.

We find practical solutions that we use to our clients' advantage. Our team of experts supports individuals, and businesses ranging from start-ups and SMEs to large international groups, both listed and privately owned.

Where understanding of our clients' sector makes the difference, our experts invest their in-depth industry expertise to provide invaluable support and insights.

We offer the following specialist tax services:

Corporate and business taxes

Our Business Tax team will ensure that you are both tax compliant and efficient.

We provide specialist corporate and business tax advice on both a local and international level, which includes senior accounting officer and large business compliance, transaction services, due diligence, R&D tax relief, employer solutions and global mobility. We also support both the personal and business affairs of partnerships and LLPs.

Read more

Personal tax and wealth management

Our team will guide you through the complex world of taxes, helping you meet all filing requirements and identifying risks and opportunities to help mitigate tax liabilities.

We advise individuals, the self-employed, partners, trustees and executors with their UK and international tax affairs. Our services include all aspects of tax, including Self Assessment, Capital Gains Tax, Inheritance Tax, property (both residential and commercial), trusts, family wealth and estate planning, residence and domicile issues.

Read more

VAT and Indirect taxes

Our indirect tax team will support you in meeting your VAT compliance objectives and advise you on any VAT issues that your business faces.

We can ensure that your VAT risk is assessed and managed, and that your VAT recovery is optimised. We can also provide advice and compliance services on other indirect taxes, such as Insurance Premium Tax, Customs duty, and Air Passenger Duty.

Read more

Tax disputes

HMRC is increasing the number and scope of tax investigations into both individuals and businesses, covering all aspects of potential underpayments of tax, including offshore investments, personal and corporate Self Assessment Tax Returns, PAYE and NIC compliance and VAT.

If an issue arises, our trusted advisors will match the right specialists with your needs to provide you the necessary support – whether for a routine HMRC enquiry or a more complex investigation.

Read more

PKF

PKF Littlejohn LLP,
15 Westferry Circus,
Canary Wharf,
London E14 4HD

Tel: +44 (0)20 7516 2200
www.pkf-l.com