



HM Revenue  
& Customs

# Consultation: Office of Tax Simplification review of unapproved share schemes: Marketable Security

## **Consultation document**

Publication date: 17 July 2014

Closing date for comments: 10 October 2014

<b>Subject of this consultation:</b>	A recommendation made by the Office of Tax Simplification (OTS) that the Government introduce the concept of the 'marketable security' into the tax rules for employment-related securities. This would change the basis of taxation for employment-related securities, such as employee shares, so that, broadly, individuals can choose whether the tax charge on these securities arises at the time they are acquired or, if different, at the time at which they can be sold for cash (when they become 'marketable'). Other features of this OTS proposal include changes to the rules on 'readily convertible assets' and to the taxation of dividend and similar income from employment-related securities in certain circumstances.
<b>Scope of this consultation:</b>	This document is designed to explore issues on which the Government believes that further discussion and evidence would be helpful to its consideration of this recommendation.
<b>Who should read this:</b>	Employers and employees who provide or receive employment-related securities, their advisers and representatives, and payroll and share scheme administrators.
<b>Duration:</b>	12 weeks
<b>Lead official:</b>	Colin Strudwick, HM Revenue and Customs.
<b>How to respond or enquire about this consultation:</b>	Responses, enquiries about the content or scope of the document, and requests for hard copies should be sent to Savings and Share Schemes Team, Room G53, 100 Parliament Street, London SW1A 2BQ; or by email to: <a href="mailto:shareschemes@hmrc.gsi.gov.uk">shareschemes@hmrc.gsi.gov.uk</a> .
<b>Additional ways to be involved:</b>	As the issues are largely technical, it is assumed that those wishing to respond to this consultation will mainly do so in writing or electronically. HMRC will also consider requests for meetings, which can be made to the postal or email address above.
<b>After the consultation:</b>	The Government intends to give an update on progress in response to this consultation in autumn 2014.
<b>Getting to this stage:</b>	The OTS published its recommendation on the 'marketable security' on 16 January 2013, alongside other recommendations for the simplification of the tax rules and processes for non-tax advantaged employment-related securities.
<b>Previous engagement:</b>	The OTS consulted a wide range of stakeholders in the course of its review of employee shares schemes, including in the development of its 'marketable security' proposal. This is the first stage where the Government has sought written responses on this recommendation.

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**On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats**

# 1. Introduction

## Taxation of Employment-Related Securities

- 1.1 Income tax and National Insurance Contributions (NICs) are generally due where an employer awards shares, share options or other employment-related securities (ERS) to employees. The tax legislation in this area, which has applied since 2003, is designed to ensure that employment income paid in the form of ERS is subject to income tax and NICs where appropriate. Further details can be found in Chapter 2.

## The Office of Tax Simplification review of employee share schemes

- 1.2 The Government is committed to simplifying the tax rules and processes for ERS, and in July 2011 the Exchequer Secretary to the Treasury asked the Office of Tax Simplification (OTS) to undertake a two-stage review of complexity around employee share schemes. The OTS consulted a wide range of businesses and share scheme specialists during its review and when developing its recommendations.
- 1.3 The first stage of this OTS review concerned the four tax advantaged employee share schemes, and the Government has taken forward many of recommendations made by the OTS in relation to these schemes.
- 1.4 The second stage of this review concerned non-tax advantaged ERS and the OTS published its final report on 16 January 2013. This can be found at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/198440/ots\\_unapproved\\_employee\\_share\\_schemes\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198440/ots_unapproved_employee_share_schemes_final.pdf)
- 1.5 The OTS recommendations on non-tax advantaged ERS fell under six separate categories and a number of these recommendations have already been implemented. This consultation concerns the OTS recommendation in relation to the 'marketable security', and the point at which income tax and NICs becomes due on ERS. Other features of this OTS proposal include changes to the rules on readily convertible assets and to the taxation of dividend and similar income from ERS in certain circumstances. The OTS recognised in its report that this is a radical proposal requiring wide consultation, and therefore the timescale for any implementation of this proposal will be longer than that for other recommendations.

## Aim and scope of this consultation

- 1.6 The OTS proposal on the 'marketable security' would involve significant change to the taxation of ERS. Broadly, individuals would be able to choose whether the tax charge on ERS arises at the time they are acquired or, if different, at the time at which they can be sold for cash (when they become 'marketable'). This consultation is designed to explore areas in which the Government believes that further discussion on this OTS proposal, and further evidence of the

potential impact, would be helpful to its consideration of whether to proceed with any changes.

- 1.7 Details of how to respond to this consultation can be found in Chapter 6. It is intended that this should be primarily a written consultation, but HMRC will consider requests from representative groups and similar bodies for a meeting if that would be helpful.

### **After this consultation**

- 1.8 The Government intends to give an update on progress in response to this consultation in autumn 2014.

## 2. The ‘marketable security’

### The current rules for the taxation of employment-related securities

- 2.1 ERS awarded to employees, like other forms of remuneration, are generally taxed as employment income. The current rules for the taxation of ERS are designed to provide that a charge to income tax (and NICs where appropriate) arises at certain points at which an employee receives value from securities obtained because of their employment. Once income tax has been accounted for on the full value of the ERS, any subsequent growth is taxed as capital, and is therefore subject to capital gains tax.
- 2.2 The current rules mean that income tax (and NICs where appropriate) may arise at the time that the employee acquires the ERS, whether or not they have an unrestricted ability to sell the ERS at that time. There are separate rules in place for ERS that may be subject to forfeiture within five years of award, which generally mean that tax and NICs do not arise on acquisition.
- 2.3 Income tax and NICs may also be chargeable later, for example, when any restrictions or forfeiture conditions attaching to the ERS at the time of acquisition fall away or are varied. There are special rules for calculating the tax chargeable in these circumstances, which mean that tax is only chargeable on the previously untaxed portion of the value of the ERS.
- 2.4 However, in the case of restricted or forfeitable ERS, the current rules allow employers and employees to elect jointly to treat ERS as if they were not restricted or forfeitable at the time that they are acquired. This means that any income tax and NICs chargeable will be calculated, at the time of acquisition, on the value the ERS would have if they were not restricted or forfeitable. In most cases, this removes the possibility of income tax and NIC charges arising at a later date in respect of the securities.

### The OTS recommendation on the ‘marketable security’

- 2.5 The OTS said in its report that these rules lead to complexity and confusion. In particular, it pointed out that employees may need to sell ERS in order to pay the tax that is chargeable. Because it is not always possible for an employee to sell their ERS at the time that the tax charge arises, it may be necessary for an employee to fund this liability themselves - which the OTS referred to as a ‘dry tax charge’. The OTS argued that this can provide a disincentive for many employees, and is inconsistent with encouraging retention of ERS and aligning the interests of employees and shareholders.
- 2.6 The OTS recommendation would address the issue of the ‘dry tax charge’ on ERS by allowing employees to choose the time at which they are taxed on ERS which are not ‘marketable securities’ when they are acquired. Employees could choose to be taxed: (a) at the time they acquire the ERS (as currently, under a joint election made with their employer), or (b) at the time that the ERS become

'marketable securities', and can therefore be sold for a cash sum at least substantially equal to their unrestricted value. The OTS proposed that this should apply to ERS, whether or not an employee had exercised an option to acquire them.

2.7 The OTS summarised its proposal as follows:

*A charge to income tax and NICs (the "tax charge") should only arise on the acquisition of employment related securities (ERS) if they are "marketable".*

*ERS will be "marketable" only if they can be sold (whether or not they are actually sold) by the holder for a payment of money or money's worth which is (at least substantially) equal to the unrestricted value of the shares.*

*However, employees and companies whose securities are not marketable may enter into a joint election, on an employee-by-employee basis, to pay the tax charge earlier at the date of acquisition. This will result in a dry tax charge, but only with the employee's agreement. As with the current section 431(1) ITEPA 2003 election, whether or not to operate PAYE and charge NICs will depend on the readily convertible status of the securities. The definition of readily convertible assets in relation to ERS should be amended so that such shares will only be treated as RCAs if they come within the new definition of marketable security. As such, PAYE and NICs would not apply if the new election was made.*

*In comparison with the current position, a deferral of the tax charge on acquisition would, in the case of non-marketable securities, be permitted, allowing employees to escape the dry tax charge...*

*...The amount of the tax charge would be based on the unrestricted market value of the shares at the time they become marketable or the actual value of the consideration received on the disposal of the shares within 14 days of the time at which the charge arises. The market value will be based on the assumption that the shares are marketable and unrestricted. This will put employees in a similar position to standard investors as they will be taxed on the actual value they receive.*

***OTS Review of unapproved employee share schemes: final report, page 15-16***

2.8 The OTS recommendation also included the following features:

- Where income tax becomes due at the time ERS become 'marketable securities', these ERS will be readily convertible assets. Therefore NICs will be chargeable as well as income tax, and the relevant amounts will be collected through Pay As You Earn (PAYE).
- Where relevant, an employer's NICs charge on ERS could be transferred to an employee by agreement, as is currently the case.
- As currently, there would be no tax charge on the grant of ERS options. Once an option has been exercised, income tax and NICs

will only be chargeable when the ERS become 'marketable securities'. It would not be possible to make an election to pay tax prior to the exercise of an option.

- The current exemption from income tax on the acquisition of ERS subject to a risk of forfeiture within five years would be retained, and income tax would therefore be chargeable later on these ERS. This includes cases in which ERS become 'marketable securities' while they remain subject to a risk of forfeiture. Where these ERS cease to be subject to risk of forfeiture, income tax and NICs will only be due when they are 'marketable securities'. However, an employer and employee could still elect to disapply this exemption at the time the ERS are acquired.
- New rules for the taxation of income or benefits received by an employee from ERS on which income tax has not been paid because they are not 'marketable securities'. These rules would treat all income, dividends, gratuities, profits or incidental benefits obtained from these ERS as employment income, subject to income tax and NICs.
- New rules for the taxation of post-acquisition benefits from ERS to tackle complex or contrived avoidance arrangements.

2.9 The OTS proposed that ERS should only be 'marketable securities' *"if they can be sold (whether or not they are actually sold) by the holder for a payment of money or money's worth which is (at least substantially) equal to the unrestricted market value"*. It provided the following examples of when ERS would become 'marketable securities' under its proposal:

- ERS in a fully listed company would automatically be 'marketable securities', except where the special rules for ERS subject to a risk of forfeiture within five years apply. However, ERS in a subsidiary of a quoted company would not normally be regarded as 'marketable securities'.
- ERS in a private company would only be 'marketable securities' to the extent that a ready market existed for the ERS, such as when an employee benefit trust (EBT) or another shareholder is able and willing to purchase the ERS.
- In such cases, for example where an EBT existed but only occasionally purchased ERS in particular circumstances, the ERS would only become 'marketable securities' if and when those circumstances arose.
- ERS in a private company without an EBT or other market maker would not be 'marketable securities' until an arrangement was put in place to purchase the ERS.



2.10 One of the main benefits the OTS sees as arising from its proposal is the removal of the requirement for employees to fund a 'dry tax charge' on ERS. It also argued that its proposal would reduce uncertainty over whether ERS are readily convertible assets, and could enable the removal of complex legislative provisions and allow administration and reporting requirements for ERS to be simplified.

## 3. Analysis and consultation

### Introduction

- 3.1 The Government is grateful to the OTS for its careful consideration of these issues and welcomes the opportunity to consult on the detail and potential impact of this proposal before deciding how to proceed. In particular, the Government invites responses to the questions set out below and summarised at Chapter 5.
- 3.2 The Government is committed to simplifying the tax rules and processes for ERS. It agrees with the OTS that the ‘marketable security’ represents a radical proposal which would require broad-ranging changes to the taxation of ERS. Not only would it change the point at which tax is chargeable on certain ERS acquired by an employee by way of remuneration, but the proposal would also:
- Change the application of NICs and PAYE to ERS, by altering the rules on when ERS are readily convertible assets.
  - Alter the tax treatment of certain forms of dividend and similar income, so that in certain circumstances this would be subject to income tax and NICs as employment income.
  - Mean that in some cases, the amount on which income tax and NICs is chargeable under PAYE could not be determined until up to 14 days after the ERS became ‘marketable securities’.
- 3.3 As well as affecting the point at which tax is due and whether it is collected through PAYE or Self Assessment, the proposal will lead to more tax and NICs being collected on ERS in some cases, and less tax and NICs in other cases.
- 3.4 In relation to the proposal generally, the Government would welcome views on:
- **Question 1 – What are the merits of the ‘marketable security’ proposal for businesses and individuals and are there any potential downsides?**
  - **Question 2 – In what ways would the proposal provide a significant and proportionate simplification of the tax rules for businesses and individuals?**
  - **Question 3 – What impact would implementation of the proposal have in terms of costs and administrative burdens for businesses and individuals? How would this differ by types of businesses or individuals? Views on the initial assessment of impacts provided at Chapter 4 would be welcome.**

## The 'dry tax charge'

- 3.5 The OTS recommendation would introduce a new test that would determine the point at which tax would be chargeable in many cases. The test would be: are the ERS capable of being sold by the holder for a price that is at least substantially equal to their unrestricted value?
- 3.6 The OTS argues that the effect of the current rules is that employees may be required to fund tax due on ERS themselves, where it is not possible to sell the ERS to fund this tax. It argues that this 'dry tax charge' is a disincentive for many employees, and is inconsistent with encouraging retention of ERS and aligning the interests of employees and shareholders.
- 3.7 The Government notes that in the course of its consideration, the OTS considered views and representations from a wide range of businesses and share scheme specialists. It would however welcome further evidence of the impact of the current tax rules, and in particular 'dry tax charges', upon the level of ERS-based remuneration. While accepting the OTS analysis on this point, it is also aware that on the award of ERS, many employees choose to jointly elect with their employers to pay tax on the full unrestricted market value of non-saleable ERS (and thereby to incur a 'dry tax charge') in order that future gains can be taxed as capital, rather than being liable to income tax and NICs. In addition, many employers provide employees with the benefit of a loan on acceptable terms to meet the tax liability on ERS. Finally, in response to another recommendation in the OTS's report on unapproved share schemes, where an employer is treated as making a non-money payment to an employee (such as ERS) and is required to pay that employee's liability to income tax under PAYE, the Government has recently extended the deadline for the employer to make good that amount to the employee to 90 days after the end of the relevant tax year.
- **Question 4 – How far do you agree that the prospect of a 'dry tax charge' on the award of ERS provides a disincentive to ERS-based remuneration? Would implementation of this recommendation have any impact on the number or type of ERS awards offered or taken up?**

## Readily convertible assets

- 3.8 The OTS proposal would involve changes to the rules determining whether ERS are readily convertible assets. These longstanding rules were introduced to combat widespread avoidance of NICs. They determine, at the time that a non-monetary payment gives rise to a charge to tax as employment income, whether the employer is required to operate PAYE and whether NICs is chargeable. Broadly, readily convertible assets are those which are ordinarily, or under particular arrangements, convertible into money either immediately or in the relatively near future.

- 3.9 However, there is also an overarching rule which provides that ERS on which a company is not entitled to corporation tax relief are treated as readily convertible assets.
- 3.10 The Government recognises that the current rules on readily convertible assets may create a lack of clarity for some businesses and employers, and has carefully considered analysis from the OTS on this point. It believes that the effect of the OTS proposal in this area would be as follows:

Any ERS which are subject to:

- one or more restrictions which reduces their market value; and
- a joint election by an employer and employee to pay income tax at unrestricted market value when the ERS were acquired

would not be readily convertible assets. Therefore NICs would not be chargeable, and the tax due would be accounted for by the employee through Self Assessment, rather than by the employer under PAYE.

All other ERS would be readily convertible assets, and therefore subject to NICs and PAYE, at the time they become 'marketable securities'.

- 3.11 One of the main purposes of the OTS recommendation is to enable employees to defer tax costs in relation to their acquisition of ERS until such as time as they are in a position to sell the ERS to meet this liability, thus avoiding a 'dry tax charge'. However, employees and employers will still be able to jointly elect for the employee to be taxed on the unrestricted market value of restricted ERS, at the time these ERS are acquired – even where these ERS are not capable of being sold for their unrestricted market value at that time.
- 3.12 The OTS proposes that ERS which are subject to such an election should not be readily convertible assets. Therefore, NICs would not be chargeable on the employee or the employer in relation to these ERS, and the income tax due would be accounted for under Self Assessment rather than PAYE. Employees making an election would therefore benefit from the ability to defer payment of the tax until the appropriate Self Assessment deadline. In addition, by making an election, an employee would not be subject to the new rules proposed by the OTS that would tax dividends, gratuities, profits or incidental benefits obtained from ERS as employment income, subject to income tax and NICs.
- 3.13 These factors could provide a strong incentive for employers and employees to make an election and thereby opt for a 'dry tax charge'. Together with the potential tax and NIC advantages mentioned above, such an election may enable employers and employees to enjoy certainty over the amount of income tax and NICs that will be chargeable on the ERS. This could be beneficial for those employees who are able to afford to pay tax on the unrestricted market value of ERS at the time they are acquired, but could also significantly reduce the potential of the changes to address the difficulties that arise from 'dry tax charges'.

- **Question 5 – Would the OTS recommendation increase the incentives for employers and employees to elect for the employee to pay tax on the unrestricted value of ERS before they become marketable? If so, to what extent would the number of these elections increase?**
- **Question 6 - If so, how can this risk be addressed, consistent with the objective of mitigating difficulties that can arise where tax is due before ERS become marketable?**
- **Question 7 – If the OTS proposal were modified so that either:**
  - **the current definition of readily convertible assets were retained within the framework of the ‘marketable security’ proposal; or**
  - **a joint election by an employer and employee for the employee to pay tax on the unrestricted market value of ERS also became an election for these ERS to be ‘marketable securities’ and readily convertible assets (meaning income tax and NICs would be payable under PAYE);**

**Would either of these options address the risk while still being consistent with the underlying objectives of the proposal? If so, how?**

### **When would ERS become ‘marketable securities’?**

- 3.14 To maximise the simplification benefits of this proposed change, employers and employees must be able to determine without difficulty the point at which ERS become ‘marketable securities’. The OTS said that ERS would be ‘marketable securities’ *“if they can be sold (whether or not they are actually sold) by the holder for a payment of money or money’s worth which is (at least substantially) equal to the unrestricted market value”*.
- 3.15 In many cases it should be relatively clear whether or not ERS meet this condition. However, there could be cases where this could create uncertainty or scope for dispute. For example, the OTS recommended that ERS in a private company should only be ‘marketable securities’ to the extent that a ready market existed for the ERS, such as an employee benefit trust (EBT) or another shareholder that is able and willing to purchase the ERS. Where an EBT exists but only occasionally purchases ERS in particular circumstances, ERS would only become ‘marketable securities’ if and when those circumstances arose. Where there is no EBT or other market maker, ERS would not be ‘marketable securities’ until an arrangement was put in place to purchase them.
- 3.16 It is not clear that there are generally accepted and agreed definitions of where a ready market exists in relation to ERS. In addition, there may be some uncertainty over when the particular circumstances in which an EBT will

purchase ERS apply. These issues are likely to require detailed development in legislation and guidance to provide the necessary clarity and future-proofing. In addition, the requirement that the ERS will only become 'marketable securities' when they can be sold for their unrestricted market value could mean that income tax and NICs will not be due even where ERS can be sold – for example because of restrictions which reduce the value of the ERS but do not affect an employee's right to sell them.

- 3.17 If not addressed, this could provide new opportunities for the minority who wish to abuse the rules, for example by artificially maintaining restrictions on ERS which mean they cannot be sold for their unrestricted market value. These restrictions would mean that the ERS were not 'marketable securities' and could therefore delay tax charges to a convenient later date – for example when the securities cease to be ERS (seven years after an employee leaves the relevant employment), or when the employee will be subject to a lower rate of income tax.
- 3.18 In 2011 the Government introduced legislation to address situations in which third party arrangements, commonly involving trusts and other vehicles, had been used to avoid, reduce, or defer liabilities to income tax and NICs on rewards of an employment, or to avoid restrictions on pension tax relief. This legislation applies to arrangements involving ERS. It is therefore necessary to consider any potential interaction between this legislation and any opportunities for the unacceptable deferral of tax.
- 3.19 Any risk of avoidance of tax through value manipulation would also need to be addressed, for example in cases where – at the point at which income tax and NICs is chargeable – the value of the ERS is determined by the actions of an employer rather than an active market.
- 3.20 The OTS acknowledged the risk of abuse and made clear suggestions on how this might be addressed. It proposed that any income, dividends, gratuities or incidental benefits obtained from ERS on which no tax has been charged because these ERS are not yet 'marketable securities', should be liable to income tax and NICs as employment income. It also suggested the retention and strengthening of existing rules to tax post-acquisition benefits from ERS, in order to target complex or contrived avoidance arrangements.
- 3.21 The Government welcomes the OTS analysis on this point and agrees that measures of this type – and possibly additional safeguards – would be necessary to prevent avoidance of tax by the minority who wish to abuse the rules. In particular, it believes that it may be necessary to introduce a backstop point, at which the ERS are deemed to be 'marketable securities' and therefore liable to income tax and NICs, to tackle unacceptably long deferral of tax.
- **Question 8 – Would treating ERS as 'marketable securities' only "when they can be sold... by the holder for a payment of money or money's worth which is (at least substantially) equal to the unrestricted market value" provide an acceptable basis for**

**simplifying the tax rules? In which type of cases would further clarity and guidance on how this applies to different ERS arrangements be required? What proportion of ERS would be ‘marketable securities’ on acquisition by an employee?**

- **Question 9 – In addition to the anti-abuse approaches suggested by the OTS, would other measures be needed to prevent abuse? If so, what?**
- **Question 10 – Would there be any undesirable or unintended consequences, including costs to employers, of taxing any income, dividends, gratuities or incidental benefits obtained from ERS as employment income where recommended by the OTS?**
- **Question 11 – If the Government were to apply a backstop date at which the ERS would be deemed to be ‘marketable securities’, at what point should this apply?**

### **The amount of the tax charge on ‘marketable securities’**

3.22 Currently, tax is chargeable on the date of acquisition of ERS and/or on the date of subsequent chargeable events. The legislation contains formulae to determine the amount on which tax is chargeable in a number of different circumstances.

3.23 The OTS proposed that tax due on ‘marketable securities’ should be calculated with reference to:

- the unrestricted market value of ERS at the time they become ‘marketable securities, or
- (where applicable) the actual value of the consideration received on disposal of these ERS within 14 days of becoming ‘marketable securities’.

3.24 In practice, this could mean that it would not be possible to determine the income tax and NICs due until up to 14 days after the ERS become ‘marketable securities’. In addition, the amount to be taxed may depend upon a sale of ERS that takes place independently of the employer. This could address situations in which the unrestricted market value of the ERS at the time they become marketable does not represent the value which an employee could receive by selling the ERS, but could also result in some uncertainty and delays before an employer is able to account for the income tax and NICs due under PAYE.

- **Question 12: Would linking the amount of ERS income to be taxed to the value of consideration received on disposal of the ERS create any abuse risks or administrative difficulties for companies in complying with their PAYE obligations?**

## 4. Assessment of Impacts

### Summary of Impacts

<b>Exchequer impact (£m)</b>	This proposal, if introduced, is expected to decrease receipts to the magnitude of £100ms over the first five years, though this is an indicative estimate and may be subject to revision depending on the final design of any proposal. Any final costing will be subject to scrutiny by the Office for Budget Responsibility.
<b>Economic impact</b>	The proposal is not expected to have any significant economic impacts.
<b>Impact on individuals and households</b>	The proposal, if introduced, could increase the attractiveness for employees of remuneration through employment-related securities, compared with other forms of remuneration. It would increase or reduce the income tax and NICs chargeable on these securities, depending upon the particular circumstances. It would also impact upon the point at which any income tax and NICs become due, and whether this is collected through Self Assessment or PAYE. Individuals who receive employment-related securities would need to familiarise themselves with the new rules. Further assessment will be informed by responses to this consultation.
<b>Equalities impacts</b>	The proposal, if introduced, is not expected to have any significant impact on groups with one of the protected characteristics. However, further assessment will be informed by responses to this consultation.
<b>Impact on businesses and Civil Society Organisations</b>	The proposal, if introduced, could increase the attractiveness for employers of remuneration through employment-related securities, compared with other forms of remuneration. It would increase or reduce employer NICs chargeable on these securities, depending upon the particular circumstances. It would also impact upon the point at which income tax and NICs become due, and whether an employer is required to operate PAYE. Changes to PAYE systems may be required to tax dividends and similar income as employment income in certain circumstances, and to deal with cases in which the taxable value of ERS is determined by the price at which they are sold after they become 'marketable securities'. Businesses would need to familiarise themselves with the new rules. Further assessment will be informed by responses to this consultation.
<b>Impact on HMRC or other public sector delivery organisations</b>	The proposal is not expected to have any significant impact on public sector organisations.



<b>Other impacts</b>	Other impacts have been considered and none have been identified. However, we invite responses in particular on the impact on small or micro-businesses.
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## 5. Summary of Consultation Questions

In relation to the proposal generally (Chapter 2 and paragraphs 3.1 to 3.3):

**Question 1 – What are the merits of the ‘marketable security’ proposal for businesses and individuals and are there any potential downsides?**

**Question 2 – In what ways would the proposal provide a significant and proportionate simplification of the tax rules for businesses and individuals?**

**Question 3 – What impact would implementation of the proposal have in terms of costs and administrative burdens for businesses and individuals? How would this differ by types of businesses or individuals? Views on the initial assessment of impacts provided at Chapter 4 would be welcome.**

In relation to the impact of the ‘dry tax charge’ (paragraphs 3.5 to 3.7):

**Question 4 – How far do you agree that the prospect of a ‘dry tax charge’ on the award of ERS provides a disincentive to ERS-based remuneration? Would implementation of this recommendation have any impact on the number or type of ERS awards offered or taken up?**

In relation to changes to the rules for readily convertible assets (paragraphs 3.8 to 3.13):

**Question 5 – Would the OTS recommendation increase the incentives for employers and employees to elect for the employee to pay tax on the unrestricted value of ERS before they become marketable? If so, to what extent would the number of these elections increase?**

**Question 6 - If so, how can this risk be addressed, consistent with the objective of mitigating difficulties that can arise where tax is due before ERS become marketable?**

**Question 7 – If the OTS proposal were modified so that either:**

- **the current definition of readily convertible assets were retained within the framework of the ‘marketable security’ proposal; or**
- **a joint election by an employer and employee for the employee to pay tax on the unrestricted market value of ERS also became an election for these ERS to be ‘marketable securities’ and readily convertible assets (meaning income tax and NICs would be payable under PAYE);**

**Would either of these options address the risk while still being consistent with the underlying objectives of the proposal? If so, how?**

In relation to the time when ERS become 'marketable' (paragraphs 3.14 to 3.21):

**Question 8 – Would treating ERS as 'marketable securities' only “*when they can be sold... by the holder for a payment of money or money's worth which is (at least substantially) equal to the unrestricted market value*” provide an acceptable basis for simplifying the tax rules? In which type of cases would further clarity and guidance on how this applies to different ERS arrangements be required? What proportion of ERS would be 'marketable securities' on acquisition by an employee?**

**Question 9 – In addition to the anti-abuse approaches suggested by the OTS, would other measures be needed to prevent abuse? If so, what?**

**Question 10 – Would there be any undesirable or unintended consequences, including costs to employers, of taxing any income, dividends, gratuities or incidental benefits obtained from ERS as employment income where recommended by the OTS?**

**Question 11 – If the Government were to apply a backstop date at which the ERS would be deemed to be 'marketable securities', at what point should this apply?**

In relation to the amount of tax chargeable when ERS become marketable (paragraphs 3.22 to 3.24):

**Question 12: Would linking the amount of ERS income to be taxed to the value of consideration received on disposal of the ERS create any abuse risks or administrative difficulties for companies in complying with their PAYE obligations?**

## 6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of the OTS's 'marketable security' proposal, before the Government decides whether to implement it.

### How to respond

A summary of the questions in this consultation is included at Chapter 5.

Responses should be sent by 10 October 2014, by e-mail to [shareschemes@hmrc.gsi.gov.uk](mailto:shareschemes@hmrc.gsi.gov.uk) or by post to: Employee Shares and Securities Unit, Room G47, 100 Parliament Street, London SW1A 2BQ.

Telephone enquiries should be made to 03000 585275 (from a text phone prefix this number with 18001).

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public

authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

Please do not send responses to the consultation to this address.

# Annex A: Relevant (current) Government Legislation

Provisions in relation to employment income arising from employment-related securities can be found at section 62, Part 7 and Part 7A of the [Income Tax \(Earnings and Pensions\) Act 2003](#).

The definition of “readily convertible asset” can be found at section 702 of the [Income Tax \(Earnings and Pensions\) Act 2003](#).