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Consultation: Office of Tax Simplification: Review of unapproved share schemes

Consultation document

Publication date: 24 May 2013

Closing date for comments: 16 August 2013

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Subject of this consultation:	The Government is consulting on five recommendations made by the Office of Tax Simplification (OTS) in its review of non tax advantaged (or 'unapproved') employee share schemes, which was published in January 2013.
Scope of this consultation:	This consultation seeks views and evidence on the potential impact of five recommendations made by the OTS. Details of the Government's response to other recommendations made by the OTS can be found at Annex B.
Who should read this:	Employers and employees who provide or receive employment-related securities (such as shares), their advisers and representatives, and payroll and share scheme administrators.
Duration:	Until 16 August 2013
Lead official:	Colin Strudwick, HM Revenue and Customs.
How to respond or enquire about this consultation:	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: shareschemes@hmrc.gsi.gov.uk .
Additional ways to be involved:	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.
After the consultation:	The Government's initial response to this consultation will be published in autumn 2013 and any changes arising from this consultation are expected to be implemented in 2014.
Getting to this stage:	The OTS published its recommendations on 16 January 2013. This is the first stage of Government consultation on these recommendations.
Previous engagement:	The OTS consulted a wide range of stakeholders in the course of its review. This is the first stage of Government consultation on these recommendations.

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Foreword

In July 2011 I asked the Office of Tax Simplification (OTS) to carry out a two-stage review of the tax rules for employee share schemes. The first part of this review concerned the four tax advantaged schemes, and the Government is taking forward many of the OTS's recommendations in Finance Bill 2013.

The second part of the OTS's review concerned non tax advantaged (or 'unapproved') employee share schemes. This is generally recognised to be a complex area of the tax system, but I want to make it as simple as possible for employers and employees to apply the rules and pay the tax that is due when shares or other employment-related securities are awarded.

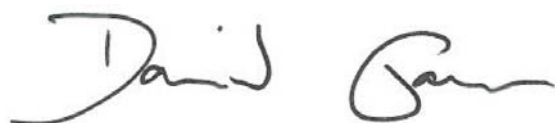
The OTS published its report on unapproved employee share schemes in January 2013. This contained a range of recommendations including those concerning the point at which income tax becomes due on employment-related securities; the tax treatment of employment-related securities awarded to internationally mobile employees; the rules that apply for certain share exchange arrangements; corporation tax relief for employee share acquisitions; the valuation of shares; and employers' information and PAYE obligations.

As a first step the Government is consulting on five of the OTS's proposals, either as recommended or in slightly modified form. This will enable us to obtain further evidence on potential impacts from businesses and other interested parties before deciding how to proceed. We will announce the outcome of this consultation in autumn 2013, and where appropriate will publish draft legislation for Finance Bill 2014.

I wrote to the OTS on 20 March 2013 to set out the Government's initial response to its other recommendations and the further work that will be carried out in response. The key part of my letter is reproduced in this document at Annex B.

I am grateful to Rt. Hon. Michael Jack, John Whiting and the OTS staff for their work on both reports, and in particular to Sarah Anderson, Tony Page and Geraldine Pamphlett who as secondees to the OTS contributed their expertise and wrote these reports. Their work has provided a strong basis for the simplification of a complex area of the tax code.

The OTS has now turned its attention to reviews of partnership taxation and employee benefits and expenses, and I look forward to receiving its recommendations in these areas.



David Gauke
Exchequer Secretary to the Treasury

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 rules in this area are designed to ensure that employment income paid in the form of ERS is subject to income tax and NICs where appropriate. There are also a number of information and administrative obligations associated with the award of ERS, and in certain circumstances corporation tax relief is available to companies in respect of employee share acquisitions.

1.2 During its work on employee share schemes, the OTS engaged extensively with external stakeholders. Its work was guided by a Consultative Committee drawn from representatives of industry, administrators, reward consultants, and the legal and tax profession. The OTS published its final report on unapproved employee share schemes on 16 January 2013, and this can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198440/ots_unapproved_employee_share_schemes_final.pdf

1.3 The OTS's main recommendations fall under 6 separate categories:

- “The marketable security” – including a change to the point at which income tax becomes due on ERS in certain cases;
- ERS awarded to internationally mobile employees;
- An employee shareholding vehicle, through which companies can manage employee share arrangements;
- HMRC's Form 42;
- PAYE and ERS; and
- The valuation of ERS.

1.4 In addition, the OTS has made supplementary recommendations in relation to the rules that determine whether ERS are ‘readily convertible assets’ for tax purposes; the tax rules for certain share exchange arrangements; and the availability of corporation tax relief for employee share acquisitions.

1.5 In some cases the OTS has provided detailed proposals for change, while in others it has set out the need for further work or consideration before a detailed proposal can be developed on the basis of its recommendation.

1.6 The Government's initial response to the OTS report, including those recommendations that do not form part of the present consultation, was published earlier this year, and the relevant extract can be found at Annex B.

Aim and scope of this consultation

1.7 This consultation is designed to seek views and further evidence about the potential impacts, costs and benefits of five of the OTS's recommendations in relation to unapproved employee share schemes.

1.8 Details of how to respond to this consultation can be found in Chapter 5. 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

1.9 Where the Government intends to proceed with any changes in response to this consultation, further details (and draft clauses where appropriate) will be published in autumn 2013, with a view to implementation in 2014.

Other work

1.10 In addition to this consultation, other work currently underway in relation to employee share schemes includes:

- legislation in Finance Bill 2013 to implement the OTS's recommendations on tax advantaged employee share schemes;
- work by HMRC to implement self-certification of tax advantaged employee share schemes and online filing of returns; and
- work on recommendations made by the OTS in relation to unapproved employee share schemes that are not within scope of the present consultation, as set out at Annex B.

2. Consultation

Introduction

2.1 Before deciding how to proceed, the Government is seeking further views and evidence on potential impacts of the OTS's recommendations in relation to:

- share for share exchanges and rollovers;
- the availability of corporation tax relief following takeover of a company;
- the taxation of ERS awarded to internationally mobile employees;
- section 222 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), and the rules concerning the 'making good' of amounts paid by an employer in respect of tax on ERS; and
- the valuation rules for listed company shares.

2.2 In each case, a brief summary of the current position and the OTS's recommendation is set out below.

Consultation questions

2.3 For each of the proposals set out below, the Government would welcome views and evidence on **the impact of the proposed change for businesses and individuals, in terms of one-off or ongoing tax or administrative costs/savings**. Concerning the taxation of ERS awarded to internationally mobile employees, the Government would also welcome views and evidence on **any impact upon the number of internationally mobile employees subject to UK income tax on ERS**.

Share for share exchanges and rollovers

2.4 In its report, the OTS pointed out that where share options held by an employee are exchanged for new share options, for example on the takeover of a company, rollover provisions may prevent an income tax charge arising. However, no such rollover provisions apply in relation to restricted shares. Broadly, shares are restricted if they have conditions attached that potentially reduce their value. The OTS reported that this can lead to income tax charges where these shares are exchanged, or that companies may undertake complex and costly arrangements to prevent such a tax charge arising.

2.5 The OTS also drew attention to the position in relation to nil and partly-paid shares held by employees, where rules for the taxation of notional loans apply. A partly paid share is one that is issued in return for an initial payment of less than its par value, where the company may ask the shareholder to pay up the difference between the subscription price and the par value after the share has been issued.

2.6 In general, where amounts outstanding in relation to these shares are paid up at or before disposal of the shares, no income tax is chargeable on the notional loan. However, in cases where the disposal takes place before the shares have been paid up, a tax charge on the “discharge” of the notional loan may arise even though the employee never “receives” that amount because the loan has, in essence, been repaid on the sale of the shares.

2.7 The OTS recommended that the exchange and rollover provisions currently in place for share options should be extended to restricted and nil or partly paid shares.

OTS’s recommendation

Establish consistency in tax treatment of all employment-related securities in share for share exchange and rollover situations

OTS’s review of non tax advantaged share schemes: final report, page 22

2.8 The Government acknowledges the case for greater consistency in this area and would welcome views and evidence on **the impact of this proposed change for businesses and individuals, in terms of one-off or ongoing tax or administrative costs/savings.**

Corporation tax relief following takeover of a company

2.9 Corporation tax relief is currently available for employee share acquisitions, subject to certain conditions. The OTS pointed out that in certain circumstances relief that may have been available had shares been acquired by an employee prior to a company takeover, may not be available where the shares are acquired after a business has been taken over by an unlisted company.

2.10 The OTS reported that this can create complexity for companies who wish to structure a takeover deal so as to secure corporation tax relief. It has therefore recommended a change to the rules in this area, so that the corporation tax relief for employee share acquisitions provided at Part 12 of the Corporation Tax Act 2009 would, where appropriate, be available for a specified period following takeover by an unlisted company.

OTS’s recommendation

Amend Part 12 Corporation Tax Act 2009 (CTA 2009) to allow corporation tax relief where there is a takeover by an unlisted company

OTS’s review of non tax advantaged share schemes: final report, page 23

2.11 The OTS proposed that relief for employee share acquisitions should be available for 90 days following the takeover, so as to align with the exercise period following a ‘disqualifying event’ for share options issued under the tax advantaged Enterprise Management Incentives scheme, as proposed in Finance Bill 2013.

2.12 The Government recognises that the current rules in this area can create difficulties in certain takeover situations. It will therefore consider this proposed extension to the availability of corporation tax relief, for cases in which other relevant conditions for relief have been met. In order to inform its consideration of this recommendation, the Government would welcome views and evidence on **the impact of this proposed change for businesses and individuals, in terms of one-off or ongoing tax or administrative costs/savings.**

Internationally mobile employees

2.13 The taxation of restricted shares and share options awarded to internationally mobile employees (IMEs) generally depends upon the residency status of the employee at the time that shares are awarded or options granted. As the OTS pointed out in its report, the current rules may lead to UK tax not being chargeable on ERS relating to UK employment; or to UK tax being chargeable on ERS relating to work carried out overseas. The OTS also pointed out that the ERS rules in this area are not aligned with those which apply for other forms of employment income earned by IMEs, and that this misalignment can create complexity in a number of areas.

2.14 The OTS set out a number of issues that had been raised during its review, including uncertainty over the rules; disagreement over which rules apply; and difficulties in relation to 'notional loans', PAYE and Form 42. It also pointed out that special rules apply in this area to counter the risk of acceleration or deferral of awards for tax purposes, and highlighted the burdens on companies and employees arising from the need to understand and operate separate tax rules for different forms of employment income.

2.15 The OTS has recommended a change to the current position so that the tax treatment of ERS awarded to IMEs would be more closely aligned with that for other forms of employment income:

OTS's recommendation

Align the tax treatment of international assignees with the general earnings charge (section 62 ITEPA 2003) and extend the corporation tax deduction in relation to employees seconded to work for UK companies where income tax is payable.

The OTS also set out further details of this recommendation:

Our first recommendation is that there should be a certain and consistent treatment of each type of award made to inbound and outbound employees. This is not currently the case for RSUs [restricted stock units].

Secondly, we recommend that all share plans that give employees shares or a right to receive shares... should be treated consistently from a residence perspective... Our preferred option [is] changing the existing residence rules applicable to share options... and restricted shares... such that these rules apply on an earnings basis.

OTS's review of non tax advantaged share schemes: final report, pages 25-27

2.16 The OTS pointed out that this approach would be more consistent with the Organisation for Economic Co-operation and Development (OECD) approved approach to the treatment of employee stock options, under which the 'employment benefit' arising is treated as earned during the period from the date the relevant option is granted up to the point at which the employee has an irrevocable right to exercise the option. The OTS suggested that this would simplify the position for international companies seeking to operate the same arrangements in all locations.

2.17 In broad terms, HMRC believes that implementation of this recommendation would involve the establishment of earnings periods for each category of ERS covered by Part 7 of ITEPA. An illustration of the type of approach that might be applied for ERS can be found at section 41B of ITEPA (concerning the remittance basis of taxation). A simple calculation could be used to establish what proportion of the Part 7 income should be treated as earned in the UK. As with section 41B of ITEPA, a 'just and reasonable' rule could be applied to override the basic rules, where these would give an inappropriate outcome in relation to non-standard awards. Associated rules similar to those in sections 15, 22, 26 and 27 of ITEPA could then be applied to the relevant income.

2.18 The OTS also pointed out that in some cases it can be difficult for companies to determine whether NICs is due under the current rules, as this may depend upon the specifics of the award made to the IME and the particular circumstances of the IME (including which country they have moved to from the UK and at what point a tax point arises). The OTS reported:

Work done by HMRC and external stakeholders in relation to NICs has identified the desirability of moving (subject to treaty requirements and so on) to apportionment for NICs to align as closely as possible with tax rules – or the OECD model recognising when the shares were earned between grant and vest/exercise. This would have the following benefits:

- *There could be scope to mitigate the effect of double charges to social security arising in more than one country (particularly in the EU);*
- *There is also an opportunity to align the NICs treatment of LTIPs [Long Term Incentive Plans] and share options; and*
- *Alignment of the NICs treatment of assignment to the EEA, reciprocal agreements and the rest of the world. Currently there is no NICs charge in relation to the exercise of an option granted in the UK, if the exercise falls outside the first 52 weeks of the period outside the UK... Any proposals for alignment should also consider the 52 week rule such that NICs continue to apply to foreign earnings for the first 52 weeks of an assignment.*

OTS's review of non tax advantaged share schemes: final report, page 28

2.19 The OTS also recommended changes to the rules concerning the availability of corporation tax deductions in respect of ERS provided to IMEs, as set out below:

OTS's recommendation

We recommend that the CT treatment of ERS income of internationally mobile employees should be reviewed such that the CT deduction matches the amount chargeable to income tax. This should be extended to include individuals employed by overseas companies but seconded to work for UK companies. Such companies can already claim a CT deduction for the secondees's non-share based remuneration costs.

OTS's review of non tax advantaged share schemes: final report, page 28

2.20 The Government recognises that the approach recommended by the OTS has significant simplification potential. In order to inform its consideration of these recommendations, the Government would welcome views and evidence on the following:

- **What would be the impact of these proposed changes for businesses and individuals, in terms of one-off or ongoing tax or administrative costs/savings?**
- **What impact would the proposed change have on the number of IMEs subject to UK income tax on ERS?**

Section 222 of ITEPA and 'making good'

2.21 Where PAYE is due on notional (non-cash) payments such as ERS, employers are usually unable to deduct the relevant amount in the same way as they would for cash payments, such as salary. In such cases, the employer must seek to deduct the full amount of tax due in respect of the notional payment from other PAYE income paid to the employee.

2.22 Where this is not possible, the employer must pay to HMRC the balance of the PAYE amount due on the notional payment. This balance is treated as earnings of the employee from the employment, and is subject to an income tax charge under section 222 of ITEPA, but only if the employee does not make good the relevant amount to the employer within 90 days. This is an anti-abuse provision, designed to put the employee in the same position as if they had received a cash payment equivalent to the balance of the PAYE amount paid by their employer.

2.23 The OTS reported situations in which a charge under section 222 of ITEPA may apply even where the employer and employee intend that the relevant amount will be made good, but that has not happened within 90 days. It suggested that in some cases it may not be practical to make good within 90 days, or that the requirement to do so may not be understood, for example by overseas associate companies. The OTS also argued that, in certain cases, a section 222 charge can apply where there is no real loss of tax.

2.24 The OTS's main recommendation in this area is that section 222 of ITEPA should not apply in relation to ERS, and that amounts not made good by the employee should be treated as an employment-related loan where appropriate. The Government has carefully considered this recommendation. While it acknowledges the points made by the OTS, it does not propose to consult on this proposal at this time, given the potential for adding complexity to the current rules on employment-related loans.

2.25 However, the OTS also made an alternative recommendation in this area. This would change the deadline for an employee to make good outstanding amounts to their employer, before a charge under section 222 of ITEPA is applied.

OTS's alternative recommendation

Extend the period in which the amount must be made good to 6 July following the end of the relevant tax year. This would align with the period when the P11D must be submitted such that, if the amount had not been made good by this date, the employer would report a charge on Form P11D and pay Class 1A NICs on this benefit. Currently the section 222 charge is liable to Class 1 NICs...

Under this alternative we would also recommend improvements to the HMRC guidance to clarify what arrangements need to be in place in order to constitute making good.

OTS's review of non tax advantaged share schemes: final report, page 47

2.26 The OTS acknowledged that this approach would provide employees with different time periods for making good outstanding amounts, depending upon when the employer is treated as making the notional payment. However, it suggested that there would be simplification benefits in a single deadline for all cases, and that in most circumstances its recommended approach would provide a longer period for an employee to make good the relevant amounts, compared with the current position.

2.27 This consultation is on a modified version of the OTS's alternative proposal set out above. It would change the current deadline for making good as recommended by the OTS, but retain Class 1 NICs for charges made under section 222 of ITEPA. The Government believes this modification would control the Exchequer impact of the proposed change without undermining the simplification benefit. In order to provide a consistent approach to section 222 of ITEPA, it is proposed that the new deadline suggested by the OTS should apply for all notional payments, not just those relating to ERS.

2.28 In order to inform its consideration of this proposed change, the Government would welcome views and evidence on **the impact of this proposed change for businesses and individuals, in terms of one-off or ongoing tax or administrative costs/savings.**

2.29 HMRC also proposes to address points made by the OTS by updating its guidance on what constitutes 'making good' for the purposes of section 222 of ITEPA.

The valuation rules for listed company shares

2.30 Where shares in listed companies are awarded to employees, it is necessary to value these shares for tax purposes. This can create difficulties where the value of shares varies over the course of a trading day. Shares in listed companies are currently valued for tax purposes on the basis of the "quarter up" method, an example of which is provided below:

Quarter up valuation

If the range of share value on a day is given as 1091p to 1101p and you have 1,000 shares, you work out the 'quarter up' price as follows:

- Find the difference between the higher price and the lower price: $1101p - 1091p = 10p$
- Work out a quarter of the difference between the two prices: $10p \times 0.25 = 2.5p$
- Add a quarter of the difference to the lower price: $1091p + 2.5p = 1093.5p$

So the quarter up price is 1093.5p and the value of the 1,000 shares is £10,935 (1,000 \times 1093.5p).

2.31 The OTS reported that the 'quarter up' method is complex and difficult to explain to employees. It therefore recommended a new basis for the valuation of listed shares.

OTS's recommendation

We recommend that the value of listed company shares is based on the closing price on the day of trading, rather than using the quarter up valuation methodology as is currently the case.

OTS's review of non tax advantaged share schemes: final report, page 53

2.32 The Government recognises that an approach based around the closing price of the shares on the relevant trading day could have simplification benefits. However, it also notes that in some cases this approach may produce a higher value for tax purposes than the current 'quarter up' method. In order to inform its consideration of this change, which would apply for the purposes of a number of taxes, the Government would welcome views and evidence on **the impact of this proposed change for businesses and individuals, in terms of one-off or ongoing tax or administrative costs/savings.**

3. Tax Impact Assessment

Summary of Impacts

The following is HMRC's initial assessment of the impact of the five proposals within this consultation. The responses to this consultation will inform a more detailed assessment of impacts, which HMRC expects to publish in a Tax Information & Impact Note (TIIN) in the autumn, alongside the response to this consultation.

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	+/-	+/-	+/-	+/-	+/-
	Any Exchequer impact will depend on decisions made as a result of this consultation. Detailed costings will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Budget 2014 where appropriate.				
Economic impact	The proposals are not expected to have any significant economic impacts.				
Impact on individuals and households	Proposals in relation to share exchanges and rollover have the potential to reduce the amount of tax payable on ERS in certain circumstances. Proposals in relation to internationally mobile employees, section 222 of ITEPA and the valuation of listed company shares could lead to more or less tax being payable, depending upon the circumstances. Further assessment of the impact of the proposal on individuals and households will be informed by responses to this consultation.				
Equalities impacts	The proposals are not anticipated to have any disproportionate impacts for individuals with protected characteristics. Further assessment in this area will be informed by responses to this consultation.				
Impact on businesses and Civil Society Organisations	<p>The measures could reduce administrative burdens on businesses overall. For example, there could be administrative and simplification benefits arising from changes to the tax rules on ERS awarded to internationally mobile employees. The proposed changes to s222 ITEPA would enable an annual review of whether such a charge is payable after the end of the relevant tax year, whereas a charge can currently arise at any time during the tax year. In addition, the proposal on valuing shares on non-listed stock exchanges would remove the need for the complex 'quarter up' calculation.</p> <p>No new administrative costs are anticipated for businesses, beyond those arising from initial one-off familiarisation with any changes to the tax rules.</p> <p>Further assessment of the impact of the proposal will be informed by responses to this consultation.</p>				

Impact on HMRC or other public sector delivery organisations	It is anticipated that there may be one-off costs arising from updates to guidance.
Other impacts	None anticipated at present – although an assessment on this point will be informed by responses to this consultation.

4. Summary of Consultation Questions

As set out in Chapter 2, this consultation is on recommendations made by the OTS in relation to:

- share for share exchanges and rollovers;
- the availability corporation tax relief following takeover of a company;
- the taxation of ERS awarded to internationally mobile employees;
- section 222 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), and the rules concerning the 'making good' of amounts paid by an employer in respect of tax on ERS; and
- the valuation rules for listed company shares.

For each of the recommendations, the Government would welcome views and evidence on **the impact of the proposed change for businesses and individuals, in terms of one-off or ongoing tax or administrative costs/savings.**

In relation to the recommendation on the taxation of ERS awarded to internationally mobile employees, the Government would also welcome views and evidence on **any impact of the proposed change on the number of internationally mobile employees subject to UK income tax on ERS.**

5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are five 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. Its purpose is to seek views and evidence on the potential costs, impacts and benefits of recommendations made by the OTS, before the Government decides whether to implement these recommendations.

How to respond

A summary of the questions in this consultation is included at Chapter 4.

Responses should be sent by 16 August 2013, by e-mail to shareschemes@hmrc.gsi.gov.uk or by post to: Employee Shares and Securities Unit, Room G53, 100 Parliament Street, London SW1A 2BQ

Telephone enquiries should be made to 020 7147 3002 (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 the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. 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:

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

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

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

Annex A: Relevant Legislation

Provisions in relation to earnings can be found at section 62 of the [Income Tax \(Earnings and Pensions\) Act 2003](#).

In this consultation, 'section 222' refers to section 222 of the [Income Tax \(Earnings and Pensions\) Act 2003](#).

The income tax rules for ERS can mainly be found at Part 7 of the [Income Tax \(Earnings and Pensions\) Act 2003](#).

The corporation tax relief available for employee share acquisitions can be found at Part 12 of the [Corporation Tax Act 2009](#).

Annex B: Government response to OTS report on non tax advantaged share schemes

Extract from a letter from the Exchequer Secretary to the Treasury, David Gauke MP, to the OTS, dated 20 March 2013:

REVIEW OF UNAPPROVED EMPLOYEE SHARE SCHEMES

Set out below is the Government's response to the recommendations that the OTS made in their review of unapproved employee share schemes.

Consultation

The Government intends to consult on a number of OTS recommendations later this year, in order to assess their potential impact before deciding whether to proceed with them in Finance Bill 2014. These recommendations are:

- an extension to the existing rollover provisions;
- allowing corporation tax relief where a company is taken over by an unlisted company;
- aligning the tax treatment of international assignees with that for general earnings and making consequential corporation tax changes; and
- replacing 'quarter up' valuation for listed company shares with a closing price valuation.

The Government also intends to consult on a modification of the alternative OTS recommendation in relation to section 222 of the Income Tax (Earnings and Pensions) Act 2003. This would change the current 90 day deadline for an employee to 'make good' the relevant tax amount to 6 July following the end of the tax year, but will not alter the class of National Insurance Contributions that currently applies. The Government believes this modification will better control the Exchequer cost of any change.

The 'marketable security'

The review recommended the introduction within tax law of the concept of the 'marketable security'. This recommendation would change the point at which tax became chargeable on employment-related securities in many cases, so that tax may not become due until a security could be sold for cash. The Government believes that this idea has simplification potential and HMRC will assess its potential Exchequer cost and further explore the anti-abuse safeguards that would be necessary. This will allow the Government to consider whether to proceed with legislation for 2015.

The 'employee shareholding vehicle'

The review recommended the introduction of a new tax advantaged 'employee shareholding vehicle', through which companies can manage employee share arrangements and create a market for shares. HMRC will work with the OTS to determine whether such a vehicle could be designed in a way that does not create potential for abuse, or significant additional Exchequer costs.

Form 42 and PAYE recommendations

HMRC will take forward the OTS recommendation that online filing of Form 42 should be introduced from 2014. As far as possible, the new online Form 42 will also take into account the OTS recommendation in relation to intelligent filing.

The OTS recommended that information currently collected on Form 42 should be integrated into RTI and that the PAYE deadline for employment-related securities should be extended to 60 days after the end of the relevant tax month. The Government will consider both these recommendations further once RTI has been fully implemented.

Valuation

The report included a number of recommendations in relation to HMRC valuation of employment-related securities. As well as consulting on the OTS recommendation on the 'quarter up' valuation method, HMRC will also explore the points made by the OTS about its guidance as part of ongoing work to improve this guidance.

The recommendation that pre-transaction share valuations from HMRC should be available in additional circumstances will be considered once we can better assess the impact on HMRC's valuation resources of the Government's introduction of the new employee shareholder status.

The OTS also recommended that 'non-recognised stock exchange' valuations should be automatically accepted for tax purposes. Such valuations are nearly always acceptable for tax purposes, but the Government believes that it is beneficial for both businesses and HMRC to have flexibility to be able to adopt a different valuation approach where appropriate. The Government will not therefore proceed with this recommendation.

Readily convertible assets

The report recommended a new definition of readily convertible assets (RCAs) combined with a retrospective test of whether a market for the securities has come into existence. The proposed change could be open to abuse and create significant Exchequer costs. The Government will not therefore take forward this recommendation. HMRC will however address the uncertainty the OTS identified in this area through its guidance on RCAs.