ANNEX B – 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.