

EXPLANATORY MEMORANDUM TO
THE MARKET VALUE OF SHARES, SECURITIES AND STRIPS REGULATIONS 2014

[2014] No. [XXXX]

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The instrument simplifies the manner in which the market value of shares in listed companies (and similar instruments) is to be determined for tax purposes.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Section 272 of the Taxation of Chargeable Gains Act 1992 (subsections (3) and (4)) and section 450 of the Income Tax (Trading and Other Income) Act 2005 (subsections (1) and (2)) specify how the market value of shares, securities, strips, etc. is to be determined for various purposes.

4.2 Those sections were amended by paragraphs 4 and 5 of Schedule 26 to the Finance Act 2007, where the date of valuation falls on or after a date to be appointed. Those amendments granted the Treasury the power to make regulations specifying how market value should be determined.

4.3 The [Appointed Day (Valuation of Shares Listed on a Recognised Stock Exchange) (Section 272(3) and (4) of the Taxation of Chargeable Gains Act 1992 and section 450 of the Income Tax (Trading and Other Income) Act 2005) Order 2014] appoints [*insert date*] as the date for those changes to take effect.

4.4 This is the first use of those powers.

4.5 This instrument implements a recommendation of the Office of Tax Simplification (OTS) in its final report on unapproved share schemes and makes equivalent provision in relation to the valuation of strips.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 There is a range of situations in several taxes where a market value is required for shares, securities, strips, etc. For example, when an employee exercises options in shares granted to them by their employer, income tax is due on the market value of the shares. That market value is specified by section 272 of the Taxation of Chargeable Gains Act 1992 and sections 450 and 451 of the Income Tax (Trading and Other Income) Act 2005.

7.2 Currently market value is determined using a calculation specified by the legislation – usually the “quarter up” method, where market value is taken to be the value of the lowest bargain made during the day plus one quarter of the difference between that value and the value of the highest bargain in that day.

7.3 In relation to share schemes, the OTS recommended that these calculations be replaced by a simpler indicator of market value: the closing price of the shares, etc. on the relevant day. The closing price, unlike the present methods, requires no calculation is freely available from a wide range of sources – such as daily newspapers, websites, etc.

7.4 This instrument implements the OTS recommendation and makes equivalent provision in relation to the valuation of strips. It provides that the market value should be the mid-point between the closing ‘buy’ and ‘sell’ prices quoted (also known as the “mid-price”). Sources which quote only one closing price generally quote the mid-price.

7.5 This instrument makes special provision in relation to employment-related securities (as defined in section 421B(8) of the Income Tax (Earnings and Pensions) Act 2003) which are disposed of by way of bargain made at arm’s length on the same day as they are acquired. These employment-related securities are subject to income tax on acquisition and, in principle, capital gains tax on sale, so this provision means that the same value is used for each tax event (effectively ensuring a nil gain for capital gains tax purposes).

8. Consultation outcome

8.1 In the summer of 2013 the Government consulted on implementing the OTS recommendation alongside other measures. The measure was almost universally welcomed by taxpayers and advisers. HMRC subsequently undertook further informal consultation with specialist advisers and the OTS to refine the details. [The Government consulted on draft regulations in the summer of 2014...]

9. Guidance

9.1 HMRC will update its guidance as appropriate in due course.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be familiarisation with the new rules.

10.2 The impact on the public sector is expected to be negligible.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2013 alongside draft Finance Bill clauses and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on small firms employing up to 20 people, the approach taken is that the manner of determining the market value of shares, etc is simplified.

11.3 The Government consulted publicly on implementation of this OTS recommendation. The Government agreed with the consensus of respondents that the measure simplified the legislation for all, including small businesses.

12. Monitoring & review

12.1 HMRC will review the effect of this instrument through its ongoing contact with businesses and advisers through its Employment-Related Securities Forum.

13. Contact

Colin Strudwick at HM Revenue and Customs Tel: 03000 585275 or email: colin.strudwick@hmrc.gsi.gov.uk can answer any queries regarding the instrument.