EXPLANATORY MEMORANDUM TO

THE MARKET VALUE OF SHARES, SECURITIES AND STRIPS REGULATIONS 2015

2015 No. 616

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons 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 Finance Act, Schedule 26, Paragraphs 4 and 5 (Valuation of Shares) (Appointed Day) Order 2015 appoints 6 April 2015 as the date for those changes to take effect.

4.4 This instrument makes regulations to implement 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 securities and 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 over 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 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 and 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 securities and 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. Equivalent provision is made in relation to securities and strips listed on a foreign exchange.

7.5 The instrument also retains a long-standing feature of section 272 of the Taxation of Chargeable Gains Act 1992 where due to special circumstances the list price is not a proper measure of market value. In that case the market value is determined under section 272 of the Act as the price shares might reasonably be expected to fetch on a sale in the open market.

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; these regulations reflect the responses received in the consultation.

8.2 In accordance with consultation responses, the final regulations make do not specify how to establish the market value of shares listed on a foreign exchange for the purposes of section 272 of the Taxation of Chargeable Gains Act 1992. These cases were considered to be rare and a fixed test not suitable. In addition, there is no specific provision for cases where the exercise of a share option and the sale of the shares occurs

in close proximity; HMRC's existing guidance on this point remains extant to ensure appropriate flexibility.

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.