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HM Revenue & Customs  
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11 February 2014

Dear Mr Strudwick,

**Draft Finance Bill 2014: Unapproved employee share schemes: Office of Tax Simplification recommendations**

***Introduction***

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European **Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Share Schemes Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

***Response***

We welcome the opportunity to comment on the legislation.

**Section 222**

We welcome that there is a proposal to change to section 222 of the Income Tax (Earnings and Pensions) Act 2003 ('section 222') as set out in the draft Finance Bill 2014. The current draft legislation makes the section 222 provision fairer and less punitive than its current application and we support this. For notional payments that arise under ITEPA 2003, the change aligns the timing of the charge under section 222 of ITEPA with the deadline for the submission of the annual share scheme returns. Therefore, it gives a more reasonable opportunity for employers to identify and rectify innocent errors on a reasonable basis before the section 222 charge arises. The similar principle should apply to the application of section 222 to other notional payments with the alignment of the section 222 charge with the completion of the Form P11D.

However, we believe that this is an opportunity to change section 222 to achieve a fairer position that is not achieved under the current draft change to the legislation. The basis for our view is that it is inappropriate that a failure by an employer to recover PAYE on a notional payment should be more punitive for the taxpayer than a failure by the employer to recover PAYE on a cash payment.

The Quoted Companies Alliance is the independent membership organisation that champions the interests of small to mid-size quoted companies.

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We recognise the purpose of section 222 and that it should not be removed from legislation. On a notional payment the employer may not be able to recover the PAYE from the employee and, if the employee is not willing to make good the PAYE due, this is exactly where section 222 should apply. In practice however, many failures of the employee to make good the PAYE are a result of an employee not being aware that there is any PAYE due. Generally, once it becomes clear that there is an amount of PAYE due, the employee makes good.

In this case, we believe that, once the employee has made good the PAYE to the employer or paid the PAYE, the tax payable under section 222 should be refunded to the employee. It is inappropriate that the employee who makes good 89 days after the end of the tax year of the notional payment does not incur a section 222 charge, whereas the employee who makes good a day later does incur the section 222 charge. A much fairer application of the provision would be that the section 222 charge does occur in the latter situation, but once the PAYE is made good, an equivalent credit should be made available such that in practice there would be no tax due.

### Registration of unapproved and inactive share schemes

We welcome the introduction of sections 421JA – 421JF of the Income Tax (Earnings and Pensions) Act 2003 in so far as they introduce a requirement to file an annual return online for certain new reportable events in relation to unapproved share schemes for the tax year 2014-15 and subsequent tax years (replacing the current Form 42).

However, HMRC have previously stated in their 8<sup>th</sup> Employment-Related Shares & Securities Bulletin (May 2013) that "From April 2014 employers will need to register **existing** and new employee share schemes with us. This includes non tax advantaged arrangements currently recorded on Form 42" (emphasis added). Similarly, in HMRC's Employment Related Securities: Registration, Self-certification and online filing of employee share schemes and arrangements – Information Note for Employers (10 December 2013), it is stated that "You must register **all existing** and new employee share schemes and arrangements online" (emphasis added) and that "You must register... Non-tax advantaged arrangements currently recorded on Form 42".

We note that it is impractical to include a requirement that annual returns filed by 6 July 2015 for the tax year 2014-15 must include notification of existing share schemes and arrangements. Any requirement dealing with notification of existing share schemes and arrangements will create an unnecessarily large burden on employers, particularly those that are small to mid-size companies that may not have dedicated share scheme professionals. If this information has to be supplied, we suggest the requirement is limited to information which has already been supplied on previous Form 42s.

If employers are required to report **all** existing schemes 'and arrangements', the obligation would extend to one-off awards made to employees and one-off options granted to non-executive directors. In some cases, these awards have been made many years before Form 42 was introduced.

In any event, clarity is needed regarding the need to register pre 2014 unapproved and inactive share schemes and arrangements in both the legislation and in HMRC guidance.

If you would like to discuss our response in more detail, we would be happy to attend a meeting.

**HM Revenue & Customs**

**Unapproved employee share schemes: Office of Tax Simplification recommendations**

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Yours sincerely,

A handwritten signature in blue ink, appearing to read 'TW', is positioned below the closing text.

Tim Ward

Chief Executive

**Quoted Companies Alliance Share Schemes Expert Group**

Fiona Bell (Chairman)	RM2 Partnership Limited
Michael Landon (Deputy Chairman)	MM & K Limited
Jared Cranney (Deputy Chairman)	ISG plc
Barbara Allen/Anika Chandra	Stephenson Harwood
Emma Bailey	Fox Williams LLP
Martin Benson	Baker Tilly
Danny Blum	Eversheds LLP
Stephen Chater /Robert Postlethwaite	Postlethwaite & Co
Sara Cohen	Lewis Silkin
Karen Cooper	Osborne Clarke
Rory Cray	FIT Remuneration Consultants
John Daughtrey	Equiniti
Matthew Findley	Pinsent Masons LLP
David Firth	Penna Consulting PLC
Philip Fisher	BDO LLP
Amanda Flint/Richard Sharman/	Grant Thornton UK LLP
Amanda Stapleton	
David Fuller	CLS Holdings PLC
Mark Gearing	Field Fisher Waterhouse
Andy Goodman	BDO LLP
Paula Hargaden	Burges Salmon
Colin Kendon	Bird & Bird LLP
Isabel Pooley/Nicholas Stretch	CMS Cameron McKenna LLP
Andrew Quayle	Olswang
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