Text of Ifs ProShare letter to HMRC re: withdrawal of 'informal' valuation services by the Shares & Assets Valuation Team

We note with disappointment, the announcement by HMRC's SAV Team on 2 February 2016, that "the decision has been taken to withdraw the valuation check service it has previously offered….for the purposes of PAYE health checks and ITEPA Post Transaction Valuation Checks…with effect from 31 March 2016", as this will have a negative effect both on companies, employees and advisors who rely on these services, but also on HMRC resources in the future as unchecked valuations may inevitably be queried and investigated much later than would previously have been the case.

The decision to withdraw the services without consultation, and at just two months' notice, is both impractical and unreasonable. The planning process undertaken by companies and advisors for such equity grants is usually longer than two months and many now face the prospect of either accelerating that process where possible or, having to contemplate proceeding with the grant without the usual safeguard and reassurance of a PAYE health check or a PTVC.

For many private companies (and quoted companies with low liquidity), share valuation is already a recognised barrier to employee equity participation, with such organisations facing higher plan implementation costs due to the need to professionally assess share value. HMRC's service withdrawal seems to be contrary to the Government's stated intention to encourage wider employee equity participation within entrepreneurial businesses. It places these companies at an unfair disadvantage.

The increased risk that is likely to flow from the withdrawal of such valuation assurance means that private company employers face the prospect of higher valuation fees. They are also likely to suffer the time-consuming distraction of potentially having to deal with employee relations issues and disruption to the employment relationship with key personnel, which would result from a later query of the award value post-submission of individual self-assessment tax returns. Some may decide, as a consequence, to scrap the use of equity to motivate and reward their workforce. This surely would be an extremely damaging unintended consequence of the withdrawal of these valuation services.

Whilst we appreciate the need for considered deployment of limited resource, it is not clear to us that the Best Estimate, PTVC and PAYE health checks actually form the bulk of the demands on the SAV team's time. With that in mind, we would welcome dialogue with the head of the SAV team and ifs ProShare would be keen to facilitate this either by hosting the meeting or by inviting key contacts and members to attend any such meeting at HMRC's offices. Ifs ProShare has offered the use of its offices and considerable network of share plans industry contacts to the HMRC SAV team in running their proposed workshops for agents, but has yet to receive acceptance of this offer of help, with the withdrawal date fast approaching.

Our ideal position would be that HMRC reconsiders the withdrawal of any valuation services – 'informal' or otherwise – however, we appreciate that significant cost savings must be found across HMRC in the current budgetary climate. The lack of advance assurance, however, is likely to mean greater costs in relation to tax return disclosure advice for private company employees. In order to mitigate the loss of these valuation services, we would urge you to consider introducing 'safe harbour' provisions. In particular, the introduction of a 'safe harbour' provision whereby a certain time limit e.g. 12 months, post-notification of the transaction/grant of awards, is agreed with HMRC, after which no investigation as to the value of the award would be undertaken (except in cases of suspected fraud or wrongdoing), would be a helpful step. This would give certainty to the employer and employee, and would enable HMRC to target resource according to risk assessment. The notification mechanism, for arrangements where this does not already exist, could be incorporated into the ERS Online service and reporting framework. We can work with you to identify further 'safe harbour' mechanisms.

We also consider that valuation checks should still be available in certain exceptional circumstances, for example, where private companies operating an internal market only offer transaction opportunities to their employee equity holders on an infrequent basis, and also for awards to large numbers of employees where the PAYE values can be significant and companies are at risk of significant fines where an error may occur.

The introduction of more specific and consistent guidance on HMRC's preferred approach to valuation methodologies would be helpful – currently, the outcomes of PTV checks seem dependent on the views of the individual inspector assigned to each case, rather than consistent over-arching principles. We are of course naturally concerned about the benefit of hindsight when valuation matters are considered at a later date, typically on a share disposal, rather than contemporaneously with the original equity transaction. Whilst we appreciate that evidence of value can be derived from subsequent transactions, we would be keen to understand what information standards will apply when valuations are only checked in arrears. The safe harbour time limit proposal is considered an appropriate safeguard in this respect.

We would strongly urge you to consult with us and other interested bodies and stakeholders on the proposed review of valuation services regarding tax-advantaged arrangements, so that we may collectively avoid further undermining the use of equity and the broader benefits that this form of remuneration can help deliver to the British economy in terms of productivity and to the Exchequer in the form of tax revenue.

Ifs ProShare – 25 February 2016

Supporting signatories:

Graeme Nuttall OBE, Partner, Fieldfisher

Deb Oxley, Chief Executive, the Employee Ownership Association

William Franklin, Partner (non-lawyer), Pett Franklin

Ian Murphie, Director, Share Plan Partners

Sarah Anderson, Director, The RM2 Partnership

Karen Cooper, Partner, Osborne Clarke LLP

Chris Blundell, Tax Partner, MHA MacIntyre Hudson

Liz Hunter, Share Schemes Director, Mazars LLP

Stephen Diosi, Legal Director, Mishcon de Reya LLP

Sent to Tony Spindler, Assistant Director, HMRC SAV Team and copied to:

Ms. Lin Homer, Chief Executive, HMRC

David Gauke MP, Financial Secretary to HM Treasury

Stephen Hammond MP, Member of the Treasury Select Committee

Helen Goodman MP, Member of the Treasury Select Committee