

EXPLANATORY MEMORANDUM TO
THE INCOME AND CORPORATION TAXES (ELECTRONIC
COMMUNICATIONS) (AMENDMENT) REGULATIONS 2010

2010 No. 2942

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

2. Purpose of the instrument

2.1 Those delivering company tax returns must use an approved method of electronic communications to do so, starting on 1 April 2011 for corporation tax return periods ending on 1 April 2010 or later. The instrument creates exceptions for companies in a creditors' voluntary winding up, in provisional liquidation, that have a company voluntary arrangement in place, or that have a compromise or arrangement in place; and for those limited liability partnerships that must deliver company tax returns.

2.2 The instrument also applies these and existing exceptions (for winding-up orders, administrations and administrative receiverships, and where such use is incompatible with religious beliefs) to corresponding circumstances governed by the law of places outside the United Kingdom.

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

3.1 None.

4. Legislative Context

4.1 HM Revenue & Customs (HMRC) has accepted electronic delivery of company tax returns since 2003. Electronic delivery by approved methods becomes compulsory as of 1 April 2011, but only for returns relating to corporation tax return periods ending on 1 April 2010 or later. There are exceptions for companies subject to winding-up orders, or in administration or administrative receivership, and where use of such methods is incompatible with religious beliefs. These arrangements are governed by the Income and Corporation Taxes (Electronic Communications) Regulations 2003 (S.I. 2003/282, as amended by S.I. 2009/3218).

4.2 The instrument amends those Regulations to except from the compulsory scheme companies in a creditors' voluntary winding up (within sections 90 and 100 of the Insolvency Act 1986 (c. 45) or the Northern Ireland equivalents), in provisional liquidation (within section 135 of that Act or the Northern Ireland equivalent), with a voluntary arrangement in place (within section 7(2) of or Schedule A1, paragraph 39(2) to that Act or the Northern Ireland equivalents), or with a compromise or arrangement in place (within Part 26 of the Companies Act 2006 (c. 46)).

4.3 The amendments also except from the compulsory scheme limited liability partnerships in the process of winding up that must then deliver company tax returns because of section 1273(4)(a) of the Corporation Tax Act 2009 (c. 4) (which does not apply under section 1273(3)(b) if the winding up period follows a permanent cessation of trade or business with a view to profit, and is not unreasonably prolonged and is not for reasons connected with tax avoidance).

4.4 The amendments also apply these exceptions to corresponding circumstances governed by the law of places outside the United Kingdom.

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 It has been accepted in the light of consultation that companies should be exempted from the requirement to deliver their company tax returns electronically while they are insolvent and their affairs are under the control of an insolvency practitioner.

7.2 It is often impractical for the full requirements of the notice to deliver a company tax return to be fulfilled in these circumstances. HMRC intends to continue with its long-established operational policy in relation to these circumstances. It is not in the interests of the Exchequer to bring the relevant arrangements within the online filing system.

7.3 There is provision made by S.I. 2009/3218 to exclude a company from the requirement to deliver its company tax return online while it is the subject of a winding up order, or during a period of administration or administrative receivership.

7.4 HMRC has accepted that similar considerations apply in relation to the circumstances recognised in these Regulations and that the exclusion should therefore be extended to these further circumstances.

- *Consolidation*

7.5 There are no plans to consolidate the legislation at this time.

8. Consultation outcome

8.1 HMRC consulted specifically on these issues with the representatives of insolvency practitioners. The provisions of this instrument have been agreed with them.

9. Guidance

9.1 HMRC is working with the representatives of insolvency practitioners to provide specific guidance to meet their needs.

10. Impact

10.1 The impact on business, charities or voluntary bodies is deregulatory. It removes a possible burden from insolvent businesses and businesses seeking to recover from financial difficulties.

10.2 The impact on the public sector is positive. It reduces administrative costs of HMRC in relation to windings up.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is the same for all companies.

11.3 The basis for the final decision on what action to take to assist small business is that this corporation tax measure must be the same for all companies.

12. Monitoring & review

12.1 HMRC will continue to consult with the insolvency practitioner sector to ensure that the policy intentions are met.

13. Contact

Steve Coad at HM Revenue & Customs Tel: 01952 295052 or email: steve.coad@hmrc.gsi.gov.uk can answer any queries regarding the instrument.