

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (APPROVED EXPENSES) (AMENDMENT) REGULATIONS
2019

2019 No. 358

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These regulations help to enact an exemption from income tax for payments and reimbursements of expenses incurred by employees in respect of accommodation and subsistence during overseas travel.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 11 of Finance Act 2015 (c. 11) introduced at section 289A of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (ITEPA) an exemption for the amounts of paid or reimbursed expenses which would be treated as earnings under the benefits code under certain circumstances where a deduction would otherwise be due under Chapters 2 or 5 of Part 5 of ITEPA.
- 6.2 Section 10 of the Finance Act 2019 (c. 1) (FA 2019) amended section 289A ITEPA by inserting a number of new subsections. It provides a tax exemption for expenses incurred in the course of qualifying travel that have been paid or reimbursed in accordance with regulations on the condition that employers ensure that employees are undertaking qualifying travel. Qualifying travel means travel, the expenses of

which are deductible from an employee's income when calculating this for income tax purposes under Chapter 2 or 5 of Part 5 of ITEPA.

6.3 This is the first use of the power contained in section 289A(2A)(a) ITEPA.

7. Policy background

What is being done and why?

7.1 Many employers pay or reimburse employee expenses incurred while travelling for their job. Employers can either pay or reimburse actual expenses for which they must provide receipts or use scale rates set by HMRC.

7.2 Overseas scale rates are concessionary amounts currently set out in HMRC guidance¹ that are provided by HMRC as an administrative easement for employers. Employers can use these rates as the maximum amounts for paying or reimbursing accommodation and subsistence expenses to employees, whose duties require them to travel abroad, free of tax and National Insurance contributions.

7.3 The rates are dependent on the country and city the employee visits along with the length of time of the visit. Many employers find the overseas scale rates a useful and simple way to reimburse employees for the costs they incur while travelling abroad for work. As the overseas scale rates are concessionary there are no requirements for employers to check employee receipts.

7.4 The government undertook a call for evidence on the taxation of employment expenses² in summer 2017 where employers indicated that they found the overseas scale rates useful and also called for stability and predictability in the expenses rules.

7.5 In response the government announced its intention at Autumn Budget 2017 to introduce new legislation to bring the concessionary overseas scale rate payment system into legislation. This will give employers certainty and clarity in their expenses practices in the future.

7.6 Section 10 of FA 2019 provides a new tax exemption for expenses incurred in the course of qualifying travel that have been paid or reimbursed in accordance with regulations on the condition that employers ensure that employees are undertaking qualifying travel. Qualifying travel means travel, the expenses of which are deductible from an employee's income when calculating this for income tax purposes under Chapters 2 or 5 of Part 5 of ITEPA.

7.7 These regulations introduce the concessionary overseas scale rates into legislation using the power introduced by section 10 of FA 2019. There will be no requirement for employers to check employee receipts.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/359797/2014_Worldwide_subsistence_rates.pdf

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663970/Taxation_of_employee_expenses_-_response_to_the_call_for_evidence_web.pdf

9. Consolidation

9.1 There are no plans for consolidation as this is a stand-alone instrument,

10. Consultation outcome

10.1 The government undertook a call for evidence on the taxation of employment expenses³ in summer 2017 and in response is introducing new legislation to bring the concessionary overseas scale rate payment system into legislation. No further consultation took place because these regulations put an existing concessionary treatment onto a legislative footing.

11. Guidance

11.1 Guidance will be made available when the Finance Act legislation comes into effect on 6 April 2019.

12. Impact

12.1 The impact on business, charities or voluntary bodies is that there is expected to be an ongoing administrative savings for businesses. One-off costs include familiarisation with the changes. Bringing the overseas scale rates into legislation is expected to have a negligible impact on employers as it will formalise existing concessionary powers used by employers.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Impact and Information Note (TIIN) for the measure was published on 6 July 2018 alongside the draft clauses and explanatory notes for Finance Bill 2019 and is available on the website at:

<https://www.gov.uk/government/publications/abolition-of-receipt-checking-for-benchmark-scale-rates-and-changes-to-overseas-scale-rates/abolition-of-receipt-checking-for-benchmark-scale-rates-and-changes-to-overseas-scale-rates>

It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific steps are being taken to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that small businesses will benefit from the administrative savings in the same way as other businesses.

14. Monitoring & review

14.1 We will monitor and review this legislation, as appropriate, within the context of the wider tax framework to ensure that it still meets the policy intent.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/663970/Taxation_of_employee_expenses_-_response_to_the_call_for_evidence_web.pdf

14.2 The regulation does not include a statutory review because of a tax exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Oliver Rodin at HM Revenue and Customs Telephone 03000 590007 or email employmentincome.policy@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jackie McGeehan Deputy Director for the Income Tax policy team at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Mel Stride, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.