

EXPLANATORY MEMORANDUM TO

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2020

2020 No. 88

1. Introduction

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

2. Purpose of the instrument

- 2.1 Pay As You Earn (PAYE) is the system used to collect income tax and other deductions from employees. Employers normally have to operate PAYE as part of their payroll. HMRC can enter into special arrangements with an employer where applying the normal rules would be impracticable.
- 2.2 This instrument will allow special arrangements to include extended deadlines for an employer to report and pay the tax to HMRC. HMRC intends to use this to extend the deadline for reporting and paying tax in respect of short-term business visitors (STBVs) to 31 May following the end of the tax year. The changes will have effect from 6 April 2020.
- 2.3 A definition of those STBVs eligible for inclusion within a special arrangement and a description of the terms of such arrangements can be found in paragraphs 6.5 and 6.6 respectively.

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 The Income Tax (Pay As You Earn) Regulations 2003 (S.I. 2003/2682) (the “PAYE Regulations”) govern the operation of the PAYE system under which employers deduct income tax and other deductions at source from employees’ pay.
- 6.2 These Regulations make amendments to the PAYE Regulations to extend the reporting and payment deadlines that can be permitted within a special arrangement. They also make a minor administrative amendment removing reference to casual employment contained in Regulation 141(1)(a) as it is covered elsewhere (within Regulation 67BB) in the PAYE Regulations.
- 6.3 These Regulations also provide that a special arrangement must be in writing and signed by HMRC and the employer.
- 6.4 As an administrative easement, employers (subject to entering into a special arrangement with HMRC) in accordance with Regulation 141 are permitted to operate PAYE in a modified way, the terms of which will be set out in their arrangement.
- 6.5 The special arrangement is often used for collection of tax in respect of PAYE income for STBVs. These are individuals who arrive in the United Kingdom (UK) from overseas branches of UK companies, or from territories that do not have a Double Taxation Agreement with the UK, and therefore have a liability to UK tax, and work for the relevant UK company for a limited number of days in a tax year.
- 6.6 HMRC permits those employers of eligible STBVs by a special arrangement to operate an annual PAYE scheme (meaning they will report payments and deductions once for a given tax year). Currently, eligible STBVs are those who do not work for a UK company for more than 30 workdays in the UK in a given tax year. HMRC requires the return for STBVs to be submitted by 19 April and payment of any tax due to be made by 22 April (following the end of the relevant tax year).

7. Policy background

What is being done and why?

- 7.1 An amendment to Regulation 141 is required to extend the deadlines for reporting and payment under a special arrangement, where appropriate to no later than 31 May following the end of the relevant tax year. HMRC will also permit special arrangements to include STBVs who spend up to 60 days working in the UK in a given tax year.
- 7.2 The changes made by this instrument are intended to facilitate the reduction of administrative burdens on UK-based employers, who operate internationally in many different countries. Many of these countries will be covered by a Double Taxation Agreement with the UK, which would mean there would be no liability to pay UK tax, but not all countries have such agreements. These employers may also have branches overseas. It will often be normal business practice to require non-resident employees to come into the UK to work for them and a liability to UK PAYE will arise.
- 7.3 Non-resident directors of the UK Company must not be included in this arrangement.
- 7.4 Employers of STBVs found the existing deadlines placed unnecessary pressure on them. This was particularly the case if they have STBVs who work in the latter stages

of that tax year. They also found that that the workday rule for eligibility to enter into this special arrangement was too restrictive.

- 7.5 The Government believes that administrative burdens should not discourage UK business travel. The Government announced, at Budget 2018, that it will extend its deadlines for reporting and paying tax from the 2020-21 tax year, and will widen eligibility for the STBV special arrangement by extending the workday rule.

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.

9. Consolidation

- 9.1 None.

10. Consultation outcome

- 10.1 HMRC held a full consultation, on behalf of the Government in July 2018, to consider options to reduce the administrative burdens caused by the tax treatment of STBVs from overseas branches and from countries not covered by Double Taxation Agreement with the UK. The Government recognised the difficulty that employers faced in administering these existing arrangements and published its response to the consultation in October 2018.
- 10.2 The consultation set out to explore opportunities for reducing administrative costs and burdens, so as to help make the UK a more attractive place to do business, whilst considering whether those opportunities provide the UK Exchequer with value for money.
- 10.3 The Government agreed that two changes would be made to the PAYE special arrangement to better ease the administrative burden of employers operating PAYE on STBVs.
- 10.4 First, the number of days that STBVs can work in the UK is increased from 30 days or less to 60 days or less. This will potentially make the arrangement more attractive to employers of STBVs and open up the PAYE special arrangement to a greater number of STBVs. It will reduce the need for employers to monitor business travel so closely when STBVs approach the current 30 workday limit rule.
- 10.5 Secondly, the existing PAYE reporting and payment deadlines for STBVs of 19 April and 22 April will be extended to 31 May, to allow employers more time to gather relevant information about their STBVs to operate PAYE accurately. It was clear that employers considered the current deadlines too restrictive, making it difficult for them to comply with their PAYE obligations particularly when STBVs worked in the UK towards the end of a tax year. Both changes will be introduced from 6 April 2020.
- 10.6 The Summary of Responses document, published 29 October 2018, can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752117/Tax_and_Administrative_Treatment_of_Short_Term_Business_Visitors_from_Overseas_Branches_-_summary_of_responses.pdf.

11. Guidance

- 11.1 New PAYE Manual Guidance (PAYE81950) will be available from 6 April 2020.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.
- 12.4 The easements introduced by this instrument do not impact adversely on businesses. The instrument simply provides further easements to reporting and payment requirements, affecting only a small number of UK businesses with branches abroad or those employing non-resident employees from countries which have no Double Taxation Agreement with the UK and therefore have a UK PAYE liability.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed 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, although the amendments made by the instrument apply to businesses of any size, they serve to reduce administrative burdens. Therefore, no specific action is required in relation to small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is by reviewing the effectiveness of the operation and administration of STBV schemes. This will be done through continued communication with employers and external stakeholder groups.
- 14.2 The regulation does not include a statutory review clause as it varies a provision relating to tax (section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015).

15. Contact

- 15.1 Anthony Shirley at HMRC can be contacted with any queries regarding the instrument. Telephone: 03000 517809 or email: anthony.shirley@hmrc.gov.uk.
- 15.2 Helen Page, Deputy Director for Tax Administration Policy and Strategy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.