

EXPLANATORY MEMORANDUM TO

THE TAXES (STATE AID) (AMENDMENTS) (EU EXIT) REGULATIONS 2020

2020 No. 1499

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes consequential amendments to tax legislation to ensure it remains legally operable from the end of the transition period following the making of the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 (SI 2020/No.1470).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 This instrument relies on section 105 of the Deregulation Act 2015 (the Deregulation Act) to make a single instrument, rather than two separate instruments, one making only a small number of changes. Regulations 3(2),(3) and (5) are made under order making powers in various provisions of the Capital Allowances Act 2001; whereas the remaining regulations rely on regulation-making powers in the Finance Act 2019.
- 3.2 Section 105 of the Deregulation Act has not been cited in the preamble to the instrument on the basis that it is materially parallel to provisions in the Interpretation Act 1978.

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)

- 3.3 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 (UK).
- 4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

- 5.1 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of the Taxes (State Aid)(Amendments)(EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Secretary of State for Business, Energy and Industrial Strategy (BEIS) made the State Aid (Revocations and Amendments) (EU Exit) Regulations 2020 on 4 December 2020. Those Regulations disapply European Union (EU) law relating to State aid that is retained in the UK by the European Union (Withdrawal) Act 2018. The overall effect of those regulations is to ensure that EU State aid law does not form part of domestic law as retained EU law after the end of the transition period. Those Regulations do not affect the application of the State aid provisions in the Northern Ireland Protocol.
- 6.2 Consequential amendments to tax legislation are required because, for example, some tax legislation refers to EU instruments that have been disapplied. If these technical amendments are not made, the tax legislation may not be fully legally operable from the end of the transition period. Affected provisions of the Finance Act 2000, the Capital Allowances Act 2001, the Income Tax Act 2007, the Corporation Tax Act 2009, the Finance Act 2016 and the Climate Change Levy (General) Regulations 2001 (SI 2001/No. 838) are amended. These provisions cover the following areas: capital allowances, Enterprise Investment Scheme, Seed Enterprise Investment Scheme, Social Investment tax relief, Venture Capital Trusts, Enterprise Management Incentives, Research and Development relief, various creative industries reliefs and the Climate Change Levy.
- 6.3 The purpose of the instrument is not to affect EU law in so far as it has effect through section 7A of the Withdrawal Act in relation to measures that affect trade between Northern Ireland and the EU. This means that at the end of the transition period, the EU law on State aid may continue to apply directly in the UK in respect of State aid measures which fall within the scope of the Northern Ireland Protocol. Whilst in most cases that result is achieved through the operation of section 7A of the European Union (Withdrawal) Act 2018, amendments are made to Finance Act 2000, Finance Act 2016 and Climate Change Levy (General) Regulations 2001 to ensure that this result is achieved.
- 6.4 The enabling powers for this instrument in section 90 of the Finance Act 2019 required one of the following conditions to be met before the power came into force (section 90(7)): the House of Commons has approved a negotiated withdrawal agreement and framework for the future relationship; the Prime Minister has notified the European Council, under article 50, of the UK's request to extend the period in which the EU Treaties shall apply to the UK; or the House of Commons has approved leaving the EU without a withdrawal agreement and framework for the future relationship. Those powers came into force on 20 March 2019 when the Prime Minister notified the President of the European Council of the UK's request to extend the period in which the EU Treaties shall still apply to the UK, which satisfied the condition in subsection (7).
- 6.5 Sections 45DB(12)(a), 45M(15)(a) and 360L(8) of the Capital Allowances Act 2001 are being exercised to update existing references to EU instruments where those instruments have since been replaced.

7. Policy background

What is being done and why?

- 7.1 A written ministerial statement by the Secretary of State for BEIS was made on 9 September 2020, setting out the government's approach to subsidy control after 2020. This includes the UK ceasing to follow EU State aid rules and instead following World Trade Organisation (WTO) subsidy rules and any international obligations on subsidies agreed under free trade agreements. Existing tax policy, however, already complies with both EU State aid rules and WTO subsidy rules and therefore there will be no practical policy changes at this time. This instrument is a tax technical one that is required to ensure the legal continuity of existing tax policy.

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

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it amends enactments to ensure that the tax legislation continues to apply as intended from the end of the transition period.

9. Consolidation

- 9.1 This instrument does not contain consolidation provisions.

10. Consultation outcome

- 10.1 Consultation was not carried out because there is no change in tax policy.

11. Guidance

- 11.1 Tax guidance will be published within HMRC manuals and on gov.uk after BEIS has published guidance on the UK's subsidy control regime.

12. Impact

- 12.1 There is no, or no significant, impact on businesses, 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 in tax policy.

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 regulatory burdens on small businesses.
- 13.3 The basis for the final decision on what action to take to assist small businesses is the lack of substantive change in tax policy.

14. Monitoring & review

- 14.1 The instrument will not be monitored because there are no substantive changes to tax policy.
- 14.2 There is no review requirement in line with section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 with respect to provisions in relation to tax.

15. Contact

- 15.1 Adeline Chan at HM Revenue and Customs, telephone: 03000 586039 or email: adeline.chan@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Mike Crabtree, Deputy Director for Corporation Tax Innovation and Growth, at HM Revenue and Customs 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.