

EXPLANATORY MEMORANDUM TO
THE EMPLOYER-FINANCED RETIREMENT BENEFITS (EXCLUDED
BENEFITS FOR TAX PURPOSES) REGULATIONS 2007

2007 No. 3537

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

This memorandum contains information for the Select Committee on Statutory Instruments.

- 2. Description**

These Regulations list the non-cash benefits provided by employers to their retired former employees and their families which are to be excluded from taxation.

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

None

- 4. Legislative Background**

4.1 These Regulations represent the first exercise of the power in section 393B(4A) of the Income Tax (Earnings & Pensions) Act 2003 (c. 1; "ITEPA 2003"). This allows regulations made under the power in section 393B(3)(d) of ITEPA 2003 to have effect before they are made. Section 393B(4A) was introduced by paragraph 21 of Schedule 20 to the Finance Act 2007 (c. 11).

4.2 These Regulations apply, with effect from 6 April 2006, to benefits provided under an employer-financed retirement benefit scheme (EFRBS). An EFRBS is defined in section 393A of ITEPA 2003 as a scheme for the provision of benefits consisting of or including relevant benefits by an employer to or in respect of its employees or former employees. Benefits provided under an EFRBS are "relevant benefits" unless they are "excluded benefits". The Regulations list the non-cash benefits that are to be excluded benefits and so excluded from the charge to income tax under section 394 of ITEPA 2003.

- 5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

- 6. European Convention on Human Rights**

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

7. Policy Background

- 7.1 Prior to 6 April 2006 non-cash benefits provided by employers for their retired former employees were not taxable unless they were provided together with cash benefits.
- 7.2 From 6 April 2006 all non-cash benefits provided by employers for their retired former employees became taxable as employment income, subject to an exemption for benefits costing less than £100 in total in a tax year. The tax charge applies whether the benefits are cash payments, non-cash benefits or a mixture of both.
- 7.3 It has been an unintended result of the change that certain benefits are exempt from tax for employees and then if the employer continues to provide the benefits they become liable to tax after the individual has retired or died.
- 7.4 Following representations made by employers and their retired former employees, discussions were held with interested parties. Constructive discussions resulted in agreement on the principle of aligning, where possible, the taxation of non-cash benefits provided by employers for retired former employees and their families more closely with the taxation of those provided for employees. An early draft of these Regulations was published on the HMRC website on 21 March 2007. The legislative proposals were generally welcomed and discussions have been ongoing to ensure that specified non-cash benefits provided by employers do not become taxable if they continue to be provided when an employee retires.
- 7.5 These additional exclusions will broadly relate to continued provision of accommodation and related expenses, welfare counselling, recreational benefits, annual parties and similar functions and equipment for disabled former employees, which, with necessary differences to reflect the situation of retired people, mirror exemptions conferred on serving employees. Exclusions will also relate to advice on the writing of wills and non-cash benefits which were first provided in connection with a termination of employment (such as retirement) that took place before 6 April 1998. Once the Regulations take effect the exclusions will be backdated to apply with effect from 6 April 2006, when the charge to tax was introduced.
- 7.6 These changes are neither politically nor legally important.

8. Impact

- 8.1. Relevant extracts from the Tax Relief for Pensions Regulatory Impact Assessment (which can be found at <http://www.hmrc.gov.uk/ria/10-tax-relief-for-pensions.pdf> or (for hard copies) by writing to the Ministerial Correspondence Unit, 2nd Floor Ferrers House, PO Box 38, Castle Meadow Road, Nottingham, NG2 1BB) are attached to this memorandum as Annex A.

This updates the partial regulatory impact assessment published in December 2006 which can be found at <http://www.hmrc.gov.uk/ria/partial-tax-relief.pdf>.

8.2. The impact on the public sector is negligible as these are not the type of benefits routinely provided in the public sector.

9. Contact

Beverley Davies at HM Revenue & Customs (tel: 020 7147 2869 or e-mail: beverley.davies@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

Extracts from Regulatory Impact Assessment Tax Relief for Pensions:

TECHNICAL IMPROVEMENTS

PURPOSE AND INTENDED EFFECT

Rationale for government intervention

10.46 All the proposed technical changes have the potential to offer some deregulatory gains and general technical improvement. They are in response to representations made by the industry.

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vii) Non-cash benefits

10.53 As from 6 April 2006 all non-cash benefits (subject to some minor exceptions) are taxable, regardless of how they are paid. The purpose of the change which came into effect on 6 April 2006 was to ensure a level playing field for pensioners who receive non-cash benefits, whether they are paid to them with cash benefits or separately. Concerns have been raised over the tax charge and the administrative burden involved in the non-cash benefits that former employers provide to pensioners.

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CONSULTATION

Within government

10.55 There has been extensive consultation with tax specialists in HM Revenue & Customs as well as colleagues in HM Treasury and the Department for Work & Pensions. There is no impact on other government departments.

Public consultation

10.56 All these measures are in response to informal representations made by the industry following the introduction of pensions simplification legislation on 6th April 2006.

OPTIONS

10.57 The options the Government has considered in each of these areas are set out below.

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vii) Non-cash benefits

1. Do nothing

10.70 This would mean all non-cash benefits (subject to some minor exceptions) remain taxable, regardless of how they are paid.

2. Legislative changes

10.71 Extend the category of benefits to be excluded from taxation and more closely align the tax treatment for non-cash benefits provided to pensioners with that of employee benefits.

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COSTS AND BENEFITS

Sectors and groups affected

10.74 These technical improvements will affect pension scheme providers, insurance companies, pension scheme administrators and members of registered pension schemes and their dependants, and financial advisers.

Benefits

10.75 The pensions industry has told HMRC that, in certain areas, the rules are needlessly complex or restrictive. These changes would bring additional flexibility, saving costs by making administration simpler – although at this stage it is not possible to quantify the effect. HMRC will monitor the response to the proposed change as part of its on-going commitment to monitoring and evaluating the Pension Tax Simplification measures.

Costs

10.76 There are no additional cost impacts on industry as these technical improvements have the potential to offer some deregulatory gains and general technical improvement. They are in response to representations made by the industry.

10.77 There are no additional costs to HMRC as a result of these measures.