

**EXPLANATORY MEMORANDUM TO  
THE EMPLOYER-FINANCED RETIREMENT BENEFITS (EXCLUDED BENEFITS  
FOR TAX PURPOSES)(AMENDMENT) REGULATIONS 2009**

**2009 No. 2886**

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. **Purpose of the instrument**

- 2.1 This instrument exempts from tax the provision of annual health screening and medical check-ups provided by employers to their former employees.

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

- 3.1 None

4. **Legislative Context**

4.1 Relevant benefits provided under an employer-financed retirement benefit scheme (EFRBS) count as employment income under section 394 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). 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. Section 393B of ITEPA defines "relevant benefits".

4.2 Section 393B(3) of ITEPA 2003 provides that certain benefits, which are provided under an EFRBS, are not relevant benefits because they are excluded benefits. The description of excluded benefits may be prescribed in secondary legislation. These Regulations represent the exercise of the power in section 393B(3)(d) to prescribe benefits which are excluded benefits and in respect of which no tax charge consequently arises under section 394 of ITEPA.

4.3 Because the regulations have effect from the tax year 2006-2007, they are retrospective. The authority for this is contained in section 393B(4A) which provides for regulations made under the power in section 393B(3)(d) to be capable of having effect before they are made.

4.4 These Regulations amend the Employer-Financed Retirement Benefits (Excluded Benefits for Tax Purposes) Regulations 2007 [SI2007/3537] (the 2007 Regulations).

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom

6. **European Convention on Human Rights**

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 In tax years before 2009-2010, HMRC exercised a concessionary practice to exempt from tax the benefit of certain health-screening assessments and medical check-ups provided free by employers. Section 55 of Finance Act 2009 formalised this concession by introducing section 320B of ITEPA 2003. This exempts current employees from tax on benefit consisting of one health-screening assessment and/or one medical check-up in a tax year provided by their employer. It has effect from the 2009-2010 tax year.

7.3 If an employer continues to provide former employees with free annual medical check-ups and health-screening after they retire, a tax charge would arise under section 394 of ITEPA 2003. This is contrary to the policy objective, which is to align the taxation of non-cash benefits provided to retired employees as closely as possible with the taxation of the benefits employers provide to their current employees.

7.4 The 2007 Regulations are therefore being amended to prescribe that medical check-ups and health-screening assessments provided to former employees after they have retired are excluded benefits on condition that –

- the individual first received the benefit consisting of a health-screening assessment or a medical check-up in the course of their employment and
- the benefit would have been exempted under section 320B of ITEPA 2003 if
  - the individual was still employed and
  - section 320B had been in force in that tax year.

Because this benefit to former employees might otherwise have been taxable since the 2006-2007 tax year, the amendment has effect back to that tax year.

- *Consolidation*

7.4 These Regulations make only small amendments to the 2007 Regulations and HMRC has no current plans to consolidate.

## **8. Consultation outcome**

8.1 A draft of the regulations were published on the HMRC website on 31 March 2009 inviting comments from interested parties. No comments on the draft regulations were received.

## **9. Guidance**

9.1 Guidance on this instrument will be included in the next available update of the HMRC Employment Income Manual.

## **10. Impact**

10.1 No impact on business, charities, voluntary bodies or public sector is foreseen.

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

**11. Regulating small business**

11.1 The legislation applies to small business but no additional burden for small businesses has been identified

**12. Monitoring & review**

12.1 The impact of the changes will be assessed as part of HMRC's more general plans for monitoring and evaluating the impact of the pension simplification reforms.

**13. Contact**

Beverley Davies at HM Revenue & Customs (tel: 0207 147 2869 or e-mail: [Beverley.Davies@hmrc.gsi.gov.uk](mailto:Beverley.Davies@hmrc.gsi.gov.uk)) can answer any queries regarding the instrument.