EXPLANATORY MEMORANDUM TO

THE INCOME TAX (RECOMMENDED MEDICAL TREATMENT) REGULATIONS 2014

2014 No. 3227

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 Section 320C of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) provides an exemption from income tax where an employer funds recommended medical treatment where the recommendation meets the requirements set out in that section.

2.2 Section 320C(3)(c) provides that the recommendation must meet any requirements specified in regulations. The purpose of these Regulations is to specify those additional requirements.

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

3.1 None

4. Legislative Context

4.1 Section 320C ITEPA was inserted by section 12 of the Finance Act 2014 with effect from 1st January 2015 (by virtue of the Finance Act 2014, Section 12 (Appointed Day) Order 2014 (2014 No.3226 (C.144))). It sets out an exemption from income tax where an employer funds recommended medical treatment, of up to £500 per employee per tax year, where the recommendation meets the requirements set out in section 320C(3) of ITEPA.

4.2 The requirements in subsection (3) are that the recommendation:

- is made to an employee as part of an occupational health service (paragraph (a));
- is for the purpose of assisting the employee to return to work after a period of absence due to injury or ill-health (paragraph (b)); and
- meets any other requirements specified in regulations (paragraph (c)).

4.3 These Regulations set out the additional requirements referred to in paragraph (c).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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 November 2011 a Department for Work and Pensions and Department for Business Innovations and Skills commissioned report "Health at work – an independent review of sickness absence" was published. Its main recommendation was the creation of a health and work assessment and advisory service. The Government accepted this recommendation and the assessment function of the new service, called Fit for Work (previously the Health and Work Service), is expected to commence in January 2015. These regulations will come into force 1 January 2015.

7.2 The report also recommended that expenditure by employers to help employees to return to work should attract tax relief, as such expenditure is usually liable to tax as either an employee's employment income or as a benefit in kind.

7.3 The Government agreed to introduce a targeted tax and National Insurance contribution (NICs) exemption for employer expenditure up to an annual limit and, following a period of consultation, announced that the exemptions would also apply to qualifying recommendations for medical treatment made by employer-arranged occupational health services.

7.4 These Regulations set out additional requirements that a recommendation for medical treatment must meet in order for the tax exemption to apply, specifically that:

- before the recommendation can be made the employee must have been:
    - assessed as unfit for work for at least 28 days, which includes an assessment that they may be fit for work subject to the employer making arrangements to enable them to return, providing the employee doesn't return before a recommendation for medical treatment has been made; or
    - absent from work due to injury or ill health for at least 28 consecutive days;
- the assessment referred to above must be carried out by a 'health care professional' as defined in the Regulations; and
- the recommendation can only be made by a health care professional and must also:
    - be in writing,
    - be provided to the employee and employer, and
    - specify the required medical treatment.

8. Consultation outcome

8.1 In accordance with the Government's Tax Consultation Framework, draft Regulations were published on the HMRC website for comment from 17 September 2014 to 15 October 2014.

8.2 Following consideration of comments received in the course of the consultation minor changes were made to regulation 4. The drafting has been simplified but the substance of the 'qualifying period of absence' remains unchanged.

9. Guidance

9.1 Guidance on the exemption and the qualifying criteria will be made available at the time the Regulations come into effect.

10. Impact

10.1 The administrative burden for employers who pay for recommended medical treatment for their employees is expected to reduce.

10.2 There is not expected to be any impact on charities, voluntary bodies or the public sector.

10.3 A Tax Impact and Information Note was published alongside the draft clauses and Explanatory Notes for Finance Bill 2014 in December 2013 and is available on the HMRC website at http://www.hmrc.gov.uk/thelibrary/tiins.htm. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The impact on any small businesses is expected to be negligible.

12. Monitoring & review

12.1 The Regulations will be monitored and reviewed as appropriate within the context of the wider tax framework.

13. Contact

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