

2014 No. 211

INCOME TAX

The Enactment of Extra-Statutory Concessions Order 2014

Made - - - - 4th February 2014

Coming into force in accordance with article 1

The Treasury make the following Order in exercise of the powers conferred by section 160 of the Finance Act 2008(a).

In accordance with section 160(7) of that Act, a draft of this instrument was laid before the House of Commons and approved by resolution of that House.

Citation and commencement

1. This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2014 and comes into force on the day after the day on which it is made.

Exemption or deduction for travel expenses

2.—(1) In Part 4 of ITEPA 2003(b) (employment income: exemptions), in Chapter 3 (other transport, travel and subsistence), after section 241 insert—

“241A Travel by unpaid directors of not-for-profit companies

(1) No liability to income tax arises in respect of a sum if or to the extent that it is paid wholly and exclusively for the purpose of paying or reimbursing travel expenses in respect of which conditions A to C are met.

(2) Condition A is that—

- (a) the employee is obliged to incur the expenses as holder of the employment, and
- (b) the expenses are attributable to the employee’s necessary attendance at any place in the performance of the duties of the employment.

(3) Condition B is that the employment is employment as a director of a not-for-profit company.

(4) Condition C is that the employment is one from which the employee receives no employment income other than sums to which Chapter 3 of Part 3 applies (expenses payments).

(5) In this section—

- (a) “director” has the same meaning as in the benefits code (see section 67), and

(a) 2008 c. 9.

(b) 2003 c. 1. “ITEPA 2003” is defined in section 165(1) of the Finance Act 2008.

- (b) “not-for-profit company” means a company that does not carry on activities for the purpose of making profits for distribution to its members or others.

241B Travel where directorship held as part of trade or profession

(1) No liability to income tax arises in respect of a sum if or to the extent that it is paid wholly and exclusively for the purpose of paying or reimbursing travel expenses in respect of which conditions A to D are met.

(2) Condition A is that the employee is obliged to incur the expenses as holder of the employment.

(3) Condition B is that the employment is employment as a director of a company.

(4) Condition C is that the employee carries on a trade, profession or vocation (alone or in partnership).

(5) Condition D is that, in calculating the profits of that trade, profession or vocation for income tax purposes, a deduction is allowed under ITTOIA 2005(a) for the expenses, but no such deduction is to be made.

(6) In this section “director” has the same meaning as in the benefits code (see section 67).”.

(2) In Part 5 of ITEPA 2003 (employment income: deductions allowed from earnings), in Chapter 2 (deductions for employee’s expenses), after section 340 insert—

“340A Travel between linked employments

(1) A deduction from earnings from an employment is allowed for travel expenses if conditions A to E are met.

(2) Condition A is that the employee is obliged to incur and pay the expenses.

(3) Condition B is that the travel—

(a) takes place within the United Kingdom, and

(b) is for the purpose of performing duties of the employment at the destination.

(4) Condition C is that the employee has performed duties of another employment at the place of departure.

(5) Condition D is that—

(a) at least one of the employments is as a director of a company (“company X”), and

(b) the other employment is also with a company (“company Y”) but not necessarily as a director of it.

(6) Condition E is that the employee was appointed as a director of company X because company Y, or a company in the same group as company Y, has a shareholding or other financial interest in company X.

(7) This section needs to be read with section 359 (disallowance of travel expenses: mileage allowances and reliefs).

(8) In this section—

“director” has the same meaning as in the benefits code (see section 67), and

“group” means a company and its 51% subsidiaries.”.

3. In section 72(3) of ITEPA 2003, after “section 340 (travel between group employments);” insert “section 340A (travel between linked employments);”.

4. The amendments made by articles 2 and 3 have effect in relation to expenses incurred on or after 6 April 2014.

(a) Part 1 of Schedule 1 to ITEPA 2003 provides that “ITTOIA 2005” means the Income Tax (Trading and Other Income) Act 2005 (c. 5).

Lump sums paid under foreign pension schemes

5.—(1) Part 6 of ITEPA 2003 (employment income: income which is not earnings or share-related) is amended as follows.

(2) In Chapter 2 (employer-financed retirement benefits), after section 395A(a) insert—

“395B Exemption or reduction for foreign service

(1) This section applies if—

- (a) a benefit to which this Chapter applies is provided to or in respect of an employee or former employee in the form of a lump sum,
- (b) the employer-financed retirement benefits scheme under which the lump sum is provided is established in a country or territory outside the United Kingdom,
- (c) the lump sum is received by the employee or former employee or a related person,
- (d) all or part of the lump sum (“the relevant part”) would, but for this section, count as employment income by virtue of section 394(1)(b) or be chargeable to income tax under section 394(2) (account having been taken of section 394(4B) and section 395), and
- (e) the service in respect of which rights to receive the relevant part of the lump sum accrued (referred to as “reckonable service”) is or includes foreign service.

(2) Section 394(1) or, as the case may be, section 394(2) does not apply to the relevant part of the lump sum if the condition in subsection (3) is met.

(3) The condition is that—

- (a) three-quarters or more of the period of reckonable service is made up of foreign service,
- (b) if the period of reckonable service exceeds 10 years, the whole of the last 10 years of that period is made up of foreign service, or
- (c) if the period of reckonable service exceeds 20 years, one-half or more of that period, including any 10 of the last 20 years, is made up of foreign service.

(4) If the condition in subsection (3) is not met, the amount that counts as employment income by virtue of section 394(1) or, as the case may be, is chargeable to income tax under section 394(2) is to be reduced by the appropriate proportion.

(5) The appropriate proportion is a proportion of the relevant part of the lump sum equal to the proportion that the period of foreign service included in the reckonable service bears to the period of reckonable service.

(6) In determining the service in respect of which rights to receive the relevant part of the lump sum accrued—

- (a) service in a previous employment or with a previous employer is to be taken into account if rights to receive the relevant part of the lump sum also accrued in respect of that service, and
- (b) it does not matter if the rights originally accrued under a different employer-financed retirement benefits scheme (whether one established in the United Kingdom or in a country or territory outside the United Kingdom).

(7) “Related person”, in relation to an employee or former employee (E), means any of the following—

- (a) E’s spouse or civil partner or E’s widow or widower or surviving civil partner,

(a) Section 395A was inserted by S.I. 2009/730.

(b) Section 394 was amended by section 249 of the Finance Act 2004 (c. 12), paragraph 595 of Schedule 1 to ITTOIA 2005, paragraph 14 of Schedule 2 to the Finance Act 2011 (c. 11), section 1(4) of the Finance Act 2012 (c. 14), and paragraph 65 of Schedule 45 to the Finance Act 2013 (c. 29).

(b) a person who is financially dependent on E, whose financial relationship with E is one of mutual dependence or who is dependent on E because of physical or mental impairment (or, if the lump sum is paid after E's death, anyone who was such a person at the time of E's death), and

(c) E's personal representatives.

(8) In this section "foreign service" has the meaning given by section 413(2)."

(3) In Chapter 3 (payments and benefits on termination of employment etc)—

(a) in section 401(2)(a) (application of this Chapter), for "413A" substitute "414A", and

(b) after section 414 insert—

"414A Exception for payments and benefits under section 615(3) schemes

(1) This Chapter does not apply to a payment or other benefit provided in the form of a lump sum under a section 615(3) scheme.

(2) In this section, "section 615(3) scheme" means a superannuation fund to which section 615(3) of ICTA(b) applies."

6. The amendments made by article 5 have effect in relation to lump sums that a person receives on or after the date on which this Order comes into force.

*Sam Gyimah
Mark Lancaster*

4th February 2014

Two of the Lords Commissioners of Her Majesty's Treasury

(a) Section 401 was amended by S.I. 2005/3229 and 2011/1037.

(b) Part 1 of Schedule 1 to ITEPA 2003 provides that "ICTA" means the Income and Corporation Taxes Act 1988 (c. 1). Section 615 of ICTA was amended by paragraph 11 of Schedule 10 to the Finance Act 1999 (c. 16), paragraph 9 of Schedule 3 to the International Development Act 2002 (c. 1), paragraph 85 of Schedule 6 and Part 1 of Schedule 8 to ITEPA 2003 and paragraph 140 of Schedule 1 to the Income Tax Act 2007 (c. 3).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 160 of the Finance Act 2008 (c. 9). It enacts extra-statutory concessions A4 and A10, by making amendments to Parts 4, 5 and 6 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA”).

This Order comes into force on 5th February 2014. The changes made by articles 2 and 3 have effect in relation to expenses incurred on or after 6 April 2014. The changes made by article 5(2) and (3) have effect in relation to lump sums that a person receives on or after 5th February 2014 (the day the Order comes into force).

Article 2 adds three new sections to ITEPA to enact paragraphs (a) to (c) of ESC A4. New section 241A exempts from income tax the payment or reimbursement of certain travel expenses of unpaid directors of not-for-profit companies. New section 241B exempts from income tax the payment or reimbursement of certain travel expenses of directors who, by virtue of the provisions in the Income Tax (Trading and Other Income) Act 2005 (c. 5) are allowed to include a deduction for those expenses against the profits of their trade, vocation, or profession, but do not do so. New section 340A allows a deduction from earnings for certain travel expenses of directors for journeys between their workplace as a director and that of a ‘linked’ employment with another company. An employment is regarded as ‘linked’ to their employment as a director if their appointment as a director was because of the other company’s shareholding or other financial interest in the company of which they are a director. Article 3 makes a consequential amendment to ITEPA.

Article 5 enacts ESC A10, which provides relief from income tax for an employee where lump sum relevant benefits are paid under employer-financed retirement benefit schemes (“EFRBS”) to the extent that the lump sum rights accrued in respect of foreign service as specified in section 413(1) of ITEPA.

ESC A10 also provides relief from income tax for an employee in respect of lump sum relevant benefits receivable under superannuation funds which meet the conditions set out in section 615(6) of the Income and Corporation Taxes Act 1988 (c. 1) (“ICTA”).

ESC A10 was partially withdrawn in respect of lump sum relevant benefits paid on or after 6 April 2011. Those benefits became chargeable to income tax under Part 7A of ITEPA (employment income provided through third parties), subject to a relief in section 554Z4 of ITEPA in respect of relevant steps relating to duties performed by an employee outside the United Kingdom.

Section 554W of ITEPA which was inserted by the Finance Act 2011 (c. 11) and the new section 395B of ITEPA which is inserted by this Order, maintain the ESC A10 relief for relevant steps taken by relevant third parties on or after 6 April 2011, to the extent that the steps comprise payments of lump sum relevant benefits in respect of pre-6 April 2011 lump sum rights.

Article 5(2) inserts a new section 395B into ITEPA which specifies circumstances in which there is a total exemption, or partial relief from the tax charge under section 394 of ITEPA for lump sum relevant benefits provided under an EFRBS in respect of foreign service. Section 395B applies to lump sums to which the employment income tax charges imposed by virtue of Chapter 2 of Part 7A of ITEPA do not apply either due to the operation of section 554W of ITEPA or because the payment does not constitute the taking of a relevant step by a relevant third person within section 554C of ITEPA.

Article 5(3) inserts a new section 414A into ITEPA which provides an exception from the tax charge under Chapter 3 of Part 6 of ITEPA (payments and benefits on termination of employment etc) for lump sums paid under superannuation funds to which section 615 of ICTA applies.

In line with government commitments, a Tax Information and Impact Note has not been prepared in respect of this Order. There has been no change in policy, and there is no change to the tax, administrative or other impacts.

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