

**EXPLANATORY MEMORANDUM TO**  
**THE FINANCE ACT 2014, SCHEDULE 9 (EMPLOYMENT-RELATED SECURITIES**  
**ETC.) (CONSEQUENTIAL ETC. AMENDMENTS) REGULATIONS 2015**

**2015 No. 360**

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

**2. Purpose of the instrument**

2.1 Where individuals acquire employment-related securities (ERS) as part of tax avoidance arrangements, they are treated as having elected to pay income tax on the unrestricted value of the ERS when they are acquired. The purpose of the instrument is to ensure that, from 6th April 2015, that rule only applies to ERS which are within the scope of UK earnings at the time of acquisition.

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

3.1 None.

**4. Legislative Context**

4.1 Following amendments made by Part 1 of Schedule 9 to the Finance Act 2014 (“Part 1”), this instrument uses powers contained in Part 4 of that Schedule to amend consequentially section 431B of the Income Tax (Earnings and Pensions) Act 2003 (“section 431B”).

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

**6. European Convention on Human Rights**

The Financial Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Finance Act 2014, Schedule 9 (Employment-related Securities etc.) (Consequential etc. Amendments) Regulations 2015 are compatible with the Convention rights.

## **7. Policy background**

- What is being done and why

7.1 Part 1 amended the rules for income tax charged on ERS acquired by internationally mobile workers, following a recommendation by the Office of Tax Simplification. The new rules broadly align taxation of ERS with the rules for taxation of cash earnings, treat internationally mobile and UK-resident workers equally and are in tune with OECD principles. The changes will come into force on 6th April 2015.

7.2 This instrument makes a consequential amendment to those changes which also corrects a potential loophole. At present, section 431B would not apply to an individual who acquired ERS as part of tax avoidance arrangements in a previous tax year while they were resident outside the UK. While this is a rare set of circumstances, the change made by this instrument also ensures that the principles of the main changes apply consistently.

- Consolidation

7.3 Not applicable.

## **8. Consultation outcome**

8.1 The changes introduced by Part 1 won wide-ranging support in consultation during the summer of 2013 and the proposals were fine-tuned during consultation on draft legislation published in December 2013.

## **9. Guidance**

9.1 HM Revenue & Customs intends to publish guidance on the operation of Part 1 in time for commencement of the new rules on 6th April 2015. No specific guidance is required for this instrument.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is as follows. The measure simplifies the rules for the taxation of ERS and ERS options, and will provide greater clarity for businesses. The impact upon each individual business will depend upon the extent to which they carry out ERS transactions covered by this measure. Overall however, the changes are expected to have a negligible impact on businesses. There will be some savings for individual businesses (depending upon their particular circumstances) but the changes could impose one-off familiarisation and/ or compliance costs in some cases. Changes to the rules on internationally mobile workers could increase business costs by requiring updates to payroll and other record keeping processes - and may require additional monitoring or tracking of ERS awards in some cases. These costs will depend upon the particular circumstances of the business and the relevant internationally mobile workers. However, it is also anticipated that long-term savings for businesses

could arise from the increased consistency, clarity and simplicity these changes will provide.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment was published on 10th December 2013.

## **11. Regulating small business**

11.1 The legislation applies to small business in principle. In practice, it is unusual for small businesses to adopt the kind of arrangements affected by Part 1 and this instrument.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken was to make the consultation process open to small businesses and their advisers.

11.3 The basis for the final decision on what action to take to assist small business was that small businesses and their advisers chose not to participate in consultation.

## **12. Monitoring & review**

12.1 This measure will be kept under review through communication with affected taxpayer groups.

## **13. Contact**

Colin Strudwick at HM Revenue & Customs Tel: 03000 585275 or email: [colin.strudwick@hmrc.gsi.gov.uk](mailto:colin.strudwick@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.