

EXPLANATORY MEMORANDUM TO

THE ENTERPRISE MANAGEMENT INCENTIVES EXEMPTIONS AND RELIEFS (AMENDMENT OF TAX ADVANTAGES IN SCHEDULE 24 TO THE FINANCE ACT 2016) REGULATIONS 2018

2018 No. 737

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument amends Part 1 of Schedule 24 to the Finance Act 2016 (c. 24) ("FA2016") by adding the enterprise management incentives exemptions and reliefs ("EMI tax relief") under Chapter 9 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) ("ITEPA 2003") to the list of tax advantages to which section 180(2) of FA2016 applies.
- 2.2 The EMI tax relief is a state aid by virtue of European Union law. This statutory instrument will enable HMRC to publish information about the relief to comply with the conditions under which the European Commission have approved the relief as a state aid.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 HMRC has powers in sections 180 to 182 of FA 2016 to collect, disclose and publish state aid information in respect of certain tax advantages.
- 4.2 Section 180(2) of FA 2016 enables HMRC to collect information about state aids received by beneficiaries in accordance with relevant EU obligations, as defined in section 182(1) of FA 2016. State aid information collected by HMRC pursuant to section 180(2) of FA 2016 may be published in accordance with section 181 of FA2016.
- 4.3 This instrument adds the EMI tax relief to the list of tax advantages to which those powers apply.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Financial Secretary to the Treasury, Mel Stride MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Enterprise Management Incentives Exemptions and Reliefs (Amendment of Tax Advantages in Schedule 24 to the Finance Act 2016) Regulations 2018 are compatible with the Convention rights.”

7. Policy background

What is being done and why

7.1 In 2012 the European Commission set out a programme to modernise state aids. A key ambition was to streamline processes and reduce the number of aids that require detailed examination by the European Commission before they can be implemented. To offset reduced examination before implementation, this reform required more transparency after implementation, to ensure state aids are monitored, and to identify beneficiaries of aids in excess of €500,000 through the European Commission’s database.

7.2 The FA2016 introduced new powers to enable HMRC to collect, disclose and publish information on certain state aids. Those powers allow HMRC to monitor and evaluate state aid tax reliefs and other tax advantages, as defined by reference to Parts 1 and 2 of Schedule 24 to FA 2016, and share certain information with the European Commission through a legal gateway for the purpose of complying with EU obligations.

7.3 One of the conditions for the continued state aid approval of the EMI tax relief is for HMRC to comply with the state aid transparency requirements by collecting, disclosing and publishing information in respect of the state aid awarded.

7.4 The EMI Code under ITEPA 2003 provides for enterprise management incentives as a government approved share scheme which allows qualifying companies with assets of £30m or less to offer individual employees share options up to the value of £250,000 in a 3 year period. Employees receive income tax and National Insurance Contributions relief if they buy the shares for at least the market value of the shares at the time the option was granted.

7.5 The scheme is designed to help small, higher risk independent companies attract and keep the staff they need to help them grow and succeed, by allowing them to offer employees attractive share options packages that benefit from tax reliefs.

Consolidation

7.6 Not applicable.

8. Consultation outcome

8.1 There has been no public consultation on these changes as none is required. The legislation to enable HMRC to collect and publish information about state aids was introduced in FA2016, alongside a Tax Information and Impact Note. This amendment adds the EMI tax relief to the list of reliefs in Schedule 24 to satisfy a mandatory requirement to enable the aid to be granted.

9. Guidance

- 9.1 New guidance is not required as the Employee Tax Advantaged Share Scheme User Manual currently provides guidance on the information that companies using the scheme are required to provide. HMRC will publish an Employee Related Securities Bulletin to inform businesses that details of companies in receipt of state aid exceeding €500,000 will be published.

10. Impact

- 10.1 The impact on business is minimal (see 11.1). There is no impact on charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering this instrument was published on 16 March 2016 alongside FA2016 and is available at <https://www.gov.uk/government/publications/state-aid-modernisation/state-aid-modernisation>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 This amendment to the legislation is unlikely to affect many small businesses in receipt of EMI tax relief, because only aid in excess of €500,000 will be reported. Provision for collecting information from businesses using the shares scheme is already in place. This measure will additionally enable HMRC to publish information on a limited number of small businesses in receipt of aid in excess of €500,000. Latest data shows that 9000 companies use the scheme.

12. Monitoring & review

- 12.1 The legislation will be monitored through information collected from the relevant claims.

13. Contact

- 13.1 Elisabeth Adams at HM Revenue and Customs, on 03000 585291; or email: incometax.structure@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.