EXPLANATORY MEMORANDUM TO

THE TAXES (AMENDMENTS) (EU EXIT) REGULATIONS 2019

2019 No. 689

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.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument will make changes to keep tax law working in the same way as it does now if the United Kingdom (UK) leaves the European Union (EU) without a negotiated deal. The instrument amends references to the EU, the European Economic Area (EEA) and related concepts, such as member state. Where changes have been made to other areas of law that have consequences for tax law, this instrument makes changes to the relevant provisions of tax law. The instrument makes changes to maintain the effect of an existing power which permits the government to bring international tax agreements into effect in the UK. It also removes references to mistaken assumptions relating to the operation of EU legislation to prevent them being taken into account when HMRC are considering whether, and the extent to which, a taxpayer is unjustly enriched by repayment of insurance premium tax, landfill tax, or excise duty.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 According to the definition of "exit day" in the Interpretation Act 1978 on the day this instrument is made, the instrument will be laid before the House of Commons less than 21 days before it comes into force. This instrument was made under the powers in section 90 of the Finance Act 2019. Those powers came into force on 20 March 2019 when the Prime Minister notified the President of the European Council of the UK's request to extend the period in which the EU Treaties shall still apply to the UK, which satisfied the condition in subsection (7). The instrument is being laid less than 21-days before it comes into force because it is important that the amendments made by this instrument are in force on exit day to ensure that the legislation still works properly after exit from the EU. This will provide certainty to stakeholders that legislation will continue working in the same way if the UK leaves the EU without a negotiated deal. Stakeholders should not be disadvantaged by the shorter period of time between the instrument being laid and coming into effect because the amendments maintain the effect of legislation so there are no practical changes. Some of those amendments are consequences of changes to other areas of law which stakeholders will already be aware of.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK, save for the provisions amending and modifying the Finance Act 2003 in Parts 2, 4 and 5, and the amendments to the Landfill Tax (Qualifying Fines) (No. 2) Order 2015 in Part 3, of this instrument, where the extent is England and Wales and Northern Ireland.

4.2 The territorial application of this instrument is the UK, save for the provisions amending and modifying the Finance Act 2003 in Parts 2, 4 and 5, and the amendments to the Landfill Tax (Qualifying Fines) (No. 2) Order 2015 in Part 3, of this instrument, where the territorial application is England and Northern Ireland.

5. European Convention on Human Rights

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

"In my view the provisions of the Taxes (Amendments) (EU Exit) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 UK tax legislation contains numerous references to the EU, the EEA and related concepts which could cause confusion if unchanged in the event the UK leaves the EU without a negotiated deal.

6.2 Non-tax legislation has been amended to remedy deficiencies in retained EU law under section 8 of the European Union (Withdrawal) Act 2018 in the event the UK leaves the EU without a negotiated deal. Some of these amendments have consequences for tax legislation.

6.3 Paragraph 2(4) of Schedule 5 to the Finance Act 1997 contains the unjust enrichment provisions under which HMRC may not be required to make a repayment of excise duty, insurance premium tax or landfill tax which would unjustly enrich the claimant. Mistaken assumptions relating to the operation of provisions of EU legislation can currently be taken into account in the decision-making process.

6.4 Section 173 of the Finance Act 2006 enables the government to give effect to tax treaties in UK law. It permits disclosure of information to HMRC by other public authorities and by HMRC to persons outside the UK.

6.5 The enabling powers for this instrument in section 90 of the Finance Act 2019 were amended at report stage which required one of the following conditions to be met before the power came into force: the House of Commons has approved a negotiated withdrawal agreement and framework for the future relationship; the Prime Minister has notified the European Council, under article 50, of the UK's request to extend the period in which the EU Treaties shall apply to the UK; or the House of Commons has approved leaving the EU without a withdrawal agreement and framework for the future relationship. This is the first use of the powers in section 90.

7. Policy background

What is being done and why?

7.1 UK tax legislation contains numerous references to the EU, the EEA, and to related concepts such as member states. This instrument amends those references to ensure those parts of the UK's tax regime will continue working in the same way if the UK leaves the EU without a negotiated deal. This certainty is important to reduce confusion and maintain stability in the UK tax system. Areas affected by these changes include income tax; corporation tax; stamp taxes; pensions; the treatment of financial products and services for the purposes of income tax, corporation tax, capital gains tax, the bank surcharge and the bank levy; reliefs in relation to video games development, theatrical productions, orchestra tax relief and museums and galleries tax relief; and gift aid claims by community amateur sports clubs.

7.2 This instrument continues the effect of tax legislation in relation to entities based in Gibraltar by amending existing legislation, together with savings provisions. These amendments, together with the savings provisions, reflect the fact that the scope of the current legislation sometimes extends to Gibraltar, but this may not be the effect of the legislation after exit day because of the interpretation of references to the EU, EEA, and to related concepts such as member states. Without these changes there could be confusion over the effect of UK tax legislation in relation to entities based in Gibraltar.

7.3 Non-tax legislation has been amended to remedy deficiencies in retained EU law under section 8 of the European Union (Withdrawal) Act 2018 in the event the UK leaves the EU without a negotiated deal. Where these amendments have an effect on tax legislation, it is necessary to make consequential changes to tax law to ensure those parts of the UK's tax regime will continue working in the same way. Again, this certainty is important to reduce confusion and maintain stability in the UK tax system. This affects the treatment of financial products and services for the purposes of income tax, corporation tax, capital gains tax, the bank surcharge, the bank levy, stamp taxes, annual tax on enveloped dwellings, inheritance tax, individual savings accounts, insurance and pensions as a result of changes to financial services law. Changes to the law on European Economic Interest Groupings and European companies (Societas Europeae) affect corporation tax, income tax and stamp taxes. Changes to the definition of 'hazardous waste' in legislation in the field of waste affect landfill tax.

7.4 Regulation 7(3) amends paragraph 2(4)(a) of Schedule 5 to the Finance Act 1997 to remove the reference to EU legislation which will no longer apply to the UK after exit day, so that it is no longer taken into account when HMRC are considering whether, and the extent to which, mistaken assumptions relating to the operation of that legislation affect the amount by which a taxpayer is unjustly enriched by repayment of insurance premium tax, landfill tax or excise duty. EU legislation which becomes part of retained EU law will continue to be taken into account for these purposes.

7.5 Regulation 14 amends section 173 of the Finance Act 2006 which is the provision that enables the government to give effect to tax treaties in UK law. This amendment ensures that public authorities are able to share information with HMRC for the purpose of enabling compliance with international tax agreements, and ensures that HMRC are able to disclose such information to other countries for that purpose.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU because it amends enactments to ensure that the legislation continues to apply as intended if the UK leaves the EU without a negotiated deal.

9. Consolidation

9.1 There are no plans to consolidate the legislation given the changes are consequential upon the UK's withdrawal from the EU.

10. Consultation outcome

10.1 This instrument forms part of wider changes to ensure that the UK has a tax regime that operates as required if the UK leaves the EU without a negotiated deal. As there is no new policy being introduced, it is considered that no formal consultation is required.

11. Guidance

11.1 All relevant notices and guidance will be updated on GOV.UK as appropriate as a result of these changes. As this may involve a large number of minor changes across the range of HMRC guidance, these updates are not linked here.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.

12.4 There is no, or no significant, impact because this instrument does not impose new obligations or substantively change tax policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that this instrument does not impose new obligations on them.

14. Monitoring & review

14.1 HMRC will keep this instrument under review to ensure that it meets the policy objectives set out in paragraph 7 above.

14.2 The regulation does not include a statutory review clause. None is required under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 (c. 26) because the power by which this instrument is made is being exercised so as to make or amend provisions imposing, abolishing, or varying any tax duty, levy, or other charge or provisions in connection with such provisions.

15. Contact

15.1 Joanna Hastie at HMRC email: joanna.hastie@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Edwards, Deputy Director for the EU Transition Unit at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Mel Stride MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.