

Draft legislation: consultation on The Income Tax (Recommended Medical Treatment) Regulations 2014

Issued: 17/09/2014

Open date: 17/09/2014

Close date: 15/10/2014

Background

The Government commissioned report “Health at work – an independent review of sickness absence” by Dame Carol Black and David Frost CBE was published in November 2011. The main recommendation of the report was the creation of a health and work assessment and advisory service that would conduct a health assessment focused on individuals on sick leave for four weeks (identified as the point at which short-term absence is at risk of becoming long-term). Based on a supportive occupational health assessment the service should then provide advice on how the individual could return to work. This new service, called the Health and Work Service (HWS), is expected to commence in Great Britain in late 2014.

The report also recommended that expenditure by employers on medical treatment and vocational rehabilitation targeted at keeping sick employees in work, or speeding their return to work, should attract tax relief. Under current tax rules such employer expenditure is either classed as an employee’s employment income or treated as a taxable benefit in kind. In both cases, it is liable income tax and National Insurance contributions.

Although the Government felt that a general tax relief for medical expenditure as recommended by the report would be too broad, the Chancellor of the Exchequer announced at Budget 2013 that a targeted tax relief would be introduced so that support is provided when an employer funds the treatment of an employee to help with their return to work after a period of sick absence. The Government intends to mirror the effect of this policy measure for National Insurance contributions (NICs).

Following two periods of consultation (one during summer 2013 on the implementation of the relief and another in winter 2013/14 on draft legislation), [section 12 of Finance Act 2014](#) introduces a new, UK-wide, tax exemption for employer expenditure on medical treatment. Expenditure qualifying for the exemption must be on treatment that is recommended by either the HWS or an employer-arranged occupational health service. The expenditure must be aimed at helping an employee return to work after a period of absence due to injury or ill-health. The exemption will be capped at £500 per employee per tax year.

The Treasury may set additional conditions or criteria that a recommended medical treatment must meet in order for the tax relief to apply. These conditions include:

- the number of consecutive days an individual receiving a recommendation must be assessed as unfit for work;
- who can carry out such an assessment; and
- the manner of assessment.

The Government now wishes to consult on the draft regulations to ensure that it gives effect to the qualifying criteria without being unnecessarily restrictive.

Regulations

A copy of the draft regulations are attached which set out:

Definition of a health care professional

- For the purposes of this legislation a health care professional is a registered medical practitioner, a registered nurse, or an occupational therapist, physiotherapist or psychologist registered with the Health and Care Professions Council.

The qualifying period

- A recommendation for medical treatment must be given after an employee has been assessed as unfit for work, or expected to be unfit for work:
 - for at least 28 consecutive days (the qualifying period), and
 - this assessment has been made by a health care professional.
- An assessment that an employee is unfit for work will also include an assessment that they 'may be fit' for work subject to the employer making appropriate arrangements to enable them to return, providing they do not return to work before a recommendation for medical treatment is made.
- The qualifying period will also be treated as met where an employee has been absent from work due to injury or ill-health for 28 consecutive days, even if an assessment of sickness absence duration has not been made.

Person making the recommendation

- Where the qualifying period is met, a recommendation for medical treatment can only be made by a health care professional.

Form of a recommendation

- A recommendation for medical treatment by a health care professional must be provided to an employee and employer in writing and must, as a minimum, confirm the medical treatment that is recommended.

Other Issues

In addition to the draft regulation, there are some further issues that we thought it would be helpful to clarify:

Return to work

The exemption is intended to apply to employer expenditure on recommended medical treatment that is '*for the purpose of assisting the employee to return to work after a period of absence ...*' (s320C(3)(b) ITEPA 2003). We recognise that in some cases there may be a short delay in the arrangement and provision of recommended medical treatment during which an employee, with other support from their employer, may be able to return to work, or that an employee may be able to return to work while treatment is ongoing.

In such circumstances the exemption may apply, subject to all other conditions being met, where an employer funds recommended medical treatment that:

- commences shortly after an employee returns to work. This would usually be expected to be within 14 days of an employees' return. Or
- commences while an employee is absent from work due to ill-health or injury, but, once treatment has started, they are able to return to work while the treatment continues.

Record-keeping requirements

Existing legislation at Regulation 97(1) of the Income Tax (Pay As You Earn) Regulations 2003 requires employers to keep and preserve for three years all PAYE records that are not otherwise required to be sent to HMRC. 'PAYE records' include documents and records relating to the calculation of PAYE income, relevant payments to employees, or the deduction of tax from such payments. Employers also need to keep details of leave and sickness absence.

Where an employer wishes to apply the exemption then, under this existing legislation, they would be expected to retain relevant records such as: attendance records; Fit Notes (including those that indicate an employee 'may be fit'); Return to Work Plans or equivalent documents from employer-arranged occupational health providers, to provide evidence that all relevant criteria have been met and the tax exemption applies.

Guidance

HMRC will provide guidance on the exemption and the qualifying criteria before the regulations come into effect.

Examples

Example 1

Simon is unable to attend work due to a stress-related illness and visits his GP on day 5 of absence. The GP expects that without certain workplace adjustments, Simon is likely to be absent from work for at least 28 days. The GP refers Simon to the HWS and provides a Fit Note for the next two weeks advising that he 'may be fit' if the workplace adjustments are carried out. Simon self-certifies his first 5 days of absence.

Simon's employer, ABC Ltd, is unable to carry out the suggested workplace adjustments and the 'may be fit' note is treated as an 'unfit for work' note. The HWS provides a written Return to Work Plan (RtWP) recommending a course of 6 therapy sessions. Simon gives his consent for the RtWP to be shared with his employer and ABC Ltd agrees to pay for the therapy sessions to help him return to work as soon as possible. After 4 sessions Simon is able to return to work on reduced hours while continuing with the remaining therapy sessions.

As the qualifying criteria have been met, the expenditure by ABC Ltd will qualify for the exemption, up to a maximum of £500 for the tax year.

Example 2

Yasmin is absent from work due to back problems. She is referred to her employer's in-house occupational health scheme where a registered nurse confirms that if certain work place adjustments are made she 'may be fit' for work but otherwise is likely to be absent for at least 28 days. The registered nurse also provides a written recommendation for a course of physiotherapy and Yasmin gives her consent for this to be shared with her employer, XYZ & Sons.

Following discussions between Yasmin and her employer, adjustments are made to her workplace that enable her to return to work before starting the physiotherapy sessions 8 days after her return.

As the qualifying criteria have been met, the expenditure by XYZ & Sons will qualify for the exemption, up to a maximum of £500 for the tax year.

Example 3

John injures his hand and is unable to carry out his duties as a driver. He attends hospital on the day of his injury where he is advised that he is expected to be absent from his work as a driver for at least 28 days. The hospital doctor refers John to the HWS and provides a Fit Note for the next two weeks advising that he 'may be fit' if he can undertake amended duties.

The HWS provides a written RtWP recommending 8 physiotherapy sessions and John gives his consent for this to be shared with his employer, PQ Ltd. He discusses with his employer a return to work on amended duties and PQ Ltd agree to arrange and pay for the recommended medical treatment. Following his return John is able to

carry out his amended duties fully, so PQ Ltd delay arranging his treatment. After 2 months John's injury starts to affect his general health and his employer then arranges, and pays for, the recommended physiotherapy sessions.

As the treatment has not been provided to assist John to return to work, the expenditure by PQ Ltd does not qualify for the exemption.

Consultation

This consultation seeks views from interested parties on the criteria set out in the regulations and on the other issues raised. In particular, responses to the specific questions below would be welcomed:

1. Do you think that these requirements will impose any significant administrative burden on either the occupational health service provider or employers? If so, how could this be lessened, while bearing in mind that employees and employers who benefit from the tax and NICs exemption may be required to demonstrate that they are entitled to the exemption on the basis the eligibility requirements have been met.
2. Will the requirement that an employee must be assessed as unfit for work by a health care professional restrict access to the exemption unnecessarily? If so, how could this impact be lessened?
3. The definition of a health care professional set out in the legislation relies on an individual being registered with an appropriate regulatory body. Do you think that this is a suitable approach to defining a health care professional? If not, how could health care professionals be otherwise defined?
4. Do you think 14 days would generally provide sufficient time to arrange and commence recommended medical treatment?
5. Are there any other aspects that you think should be reflected in the regulation or in HMRC guidance?

Next Steps

This consultation started on 17/09/2014 and, to ensure that the regulations come into effect at the same time as the HWS, will run for a four week period, closing on 15/10/2014.

Responses should be e-mailed to employmentincome.policy@hmrc.gsi.gov.uk or sent by post (e-mail is preferred) to:

Lynn Meikle
Employment Income Policy Team
Her Majesty's Revenue and Customs
Room 1E/08
100 Parliament Street
London
SW1A 2BQ