



Consultation: Internationally Mobile Employees (IMEs) and Earnings Related Securities (ERS)

Consultation document

Publication date: 24 July 2014

Closing date for comments: 16 October 2014

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| Subject of this consultation: | The Government is further consulting on draft legislation to effect proposed changes as recommended by the Office of Tax Simplification (OTS). This relates specifically to liability for earnings-related National Insurance Contributions (NICs) from employment related securities (ERS) income earned by internationally mobile employees (IMEs). |
| Scope of this consultation: | This consultation seeks views and evidence on the potential impacts of the NICs legislative change. |
| Who should read this: | Employers and employees who provide or receive employment-related securities (such as shares), their advisers and representatives, and payroll and share scheme administrators. |
| Duration: | 12 weeks. |
| Lead official: | Raj Nayyar, HM Revenue and Customs. |
| How to respond or enquire about this consultation: | Responses, enquiries about the content or scope of the document, and requests for hard copies should be sent to Raj Nayyar, HMRC, Room 1C/17, 100 Parliament Street, London SW1A 2BQ; or by email to: raj.nayyar@hmrc.gsi.gov.uk . |
| Additional ways to be involved: | It is assumed that those wishing to respond to this consultation will mainly do so in writing or electronically. HMRC will also consider requests for meetings, which can be made to the postal or email address above. |
| After the consultation: | The Government will assess and respond to any comments received prior to laying the statutory instrument. Any changes arising from this consultation are expected to be implemented for the start of the 2015/16 tax year. The changes would apply to all transactions on or after 6 April 2015 (irrespective of the date of acquisition of the ERS). |
| Getting to this stage: | The Government consulted on 5 recommendations made by the Office of Tax Simplification (OTS) in its review of non-tax advantaged (or 'unapproved') employee share schemes. Consultation took place from 24 May 2013 to 16 August 2013, which can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200910/Unapproved_share_schemes.pdf |
| | The Government later published a Summary of Responses in December 2013, which can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264669/131209_OTS_2_summary_of_responses_Final2.pdf |
| Previous engagement: | The OTS consulted a wide range of stakeholders in the course of its review. Their final report was published on 16 January 2013. This can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198440/ots_unapproved_employee_share_schemes_final.pdf . |

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1. Introduction

1.1 The Office of Tax Simplification (OTS) published the final report of its review of unapproved employee shares schemes on 16 January 2013. One of the OTS proposals related to the taxation of employment-related securities (ERS) awarded to internationally mobile employees (IMEs). The OTS recommended that the tax and National Insurance Contributions (NICs) treatment awarded to IMEs should be more closely aligned with that for other forms of employment income. It was also proposed that the rules for NICs should be aligned as closely as possible to the new rules on taxation of ERS, subject to the limitations of international social security agreements.

1.2 Income tax and NICs are generally due where an employer awards ERS to employees. The tax rules in this area are designed to ensure that employment income paid in the form of ERS is subject to income tax and NICs where appropriate.

1.3 Income received by an employee or office-holder is taxed as 'employment income' within the meaning of section 7 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). In many cases a person's employment income will consist wholly or mainly of 'general earnings'. However, the legislation also identifies certain particular types of income known as 'specific employment income'.

1.4 The complex forms which ERS can take, mean that the general earnings charge may not capture all aspects of their taxable value. A special ERS taxation regime therefore applies to treat this additional value as specific employment income. This regime is dealt with by Part 7 of ITEPA 2003.

1.5 Charges arising under Part 7 may arise at either the time of the acquisition of the ERS, or more commonly on the occasion of a post-acquisition 'chargeable event' (i.e. where value passes to the employee after acquisition, such as the exercise of a share option).

1.6 The principal charging provisions in Part 7 only applies if the employee was resident in the UK at the time of acquisition. It does not matter whether the employee was resident at the date of the later chargeable event.

1.7 Finance Act 2014 amends these rules so that Part 7 will apply to all ERS income, whether or not the employee was resident in the UK at the time of acquisition. It has also introduced new Chapter 5B of Part 2 of ITEPA 2003 which establishes the period over which Part 7 income can be regarded as accruing (broadly, the time between acquisition and the later chargeable event). The Part 7 income is then apportioned. The apportionment is normally done on a time basis, with the part which relates to UK duties being subject to income tax, and the part which relates to overseas duties being excluded from the income tax charge.

1.8 Current NICs legislation (detailed at Annex A) provides that the full amount of the ERS income (calculated under Part 7) is treated as earnings and subject to earnings-related NICs. This legislation is unaffected by Chapter 5B of Part 2 of ITEPA 2003, so the full, un-apportioned, amount of the Part 7 income is subject to earnings-related NICs.

1.9 This consultation introduces a proposed legislative change to align the income tax and NICs treatment as far as possible. However, due to international social security treaties and agreements, a full alignment of income tax and NIC rules would create a risk of double charging for some internationally mobile employees (IMEs). The Government's aim is to produce a simpler, fairer NICs treatment of ERS, as far as possible aligning with new tax rules, but with adaptations to take account of the effect of bi-lateral social security agreements and European Union (EU) law.

Revised legislation

1.10 The draft statutory instrument (Annex B) inserts a new paragraph into Part 9 of Schedule 3 of the Social Security (Contributions) Regulations 2001. This provides a disregard for the proportion of the ERS income which is attributable to periods in which the individual would not otherwise be liable for earnings-related national insurance contributions (because the individual does not meet domestic law conditions relating to residence or is exempt from national insurance due to the application of EU social security rules or an international social security convention). The ERS income is treated as having been earned over the same period as applies for the purposes of Chapter 5B of Part 2 of ITEPA 2003.

Aim and scope of this consultation

1.11 This consultation is designed to seek views and further evidence about the potential impacts, costs and benefits of the proposed NICs measure.

1.12 Details of how to respond to this consultation can be found in Chapter 5. It is intended that this should be primarily a written consultation, but HMRC will consider requests from representative groups and similar bodies for a meeting if that would be helpful.

After this consultation

1.13 Where the Government intends to proceed with any changes in response to this consultation, further details (and draft clauses where appropriate) will be published in autumn 2014, with a view to implementation for the start of the 2015/16 tax year. The changes would apply to all transactions on or after 6 April 2015 (irrespective of the date of acquisition of the ERS).

2. Consultation

Introduction

2.1 The Government is seeking further views and evidence on the potential impacts of the NICs proposals in relation to a recommendation made by the OTS.

Internationally-mobile employees (IMEs)

2.2 The taxation of restricted shares and share options awarded to IMEs generally depends upon the residency status of the employee at the time that shares are awarded or options granted. The OTS pointed out, the current rules may lead to UK tax not being chargeable on ERS relating to UK employment; or UK tax being chargeable on ERS relating to work carried out overseas.

2.3 The OTS recommended that there should be certain and consistent treatment of each type of award made to inbound and outbound employees. Also, that all share plans be treated consistently from a residence perspective – the OTS preferred option being to change the residence rules so that these rules apply on an earnings basis. The aim of the OTS recommendation being to align the tax treatment of ERS awarded to IMEs more closely with that for other forms of employment income earned by IMEs.

2.4 Specifically with regard to NICs, OTS pointed out that the consensus approach is to apply social security based on the economic activity in each country, which follows the Organisation for Economic Co-operation and Development model. The OTS also referred to work done by HMRC and external stakeholders which had identified the desirability of moving to apportionment for NICs to align as closely as possible with tax treatment, but acknowledged this had to be subject to international social security treaty requirements.

2.5 For income tax, ERS income is apportioned on a time basis, with the part which relates to UK duties being subject to income tax, and the part which relates to overseas duties being excluded from the income tax charge. Therefore, complete alignment between tax and NICs creates the risk of double-charging of NICs (for example, where income tax is chargeable on ERS in the UK, but the employee is still within a foreign social security scheme rather than NICs).

2.6 The proposed measure looks to ensure that any ERS income which is attributable to days when the individual was not in the UK social security system will be disregarded and not subject to a NICs liability. This introduces greater simplicity, and produces the best fit with international social security treaties which will mitigate the risk of a social security double charge.

2.7 The Government would welcome views and evidence on the following:

- 1. What would be the impact of the proposed change for businesses and individuals, in terms of**
 - one-off; or
 - on-going

NICs or administrative costs/savings?

- 2. Businesses would need to track IMEs movement during the period between grant and vest, in different social security schemes, in order to assess liability to UK NICs from earned ERS income. What would the impacts on business be?**
- 3. Is the lead-in period before any new rules take effect, sufficient to allow businesses to understand and implement the changes?**
- 4. The draft regulations can be found at Annex B. Do you feel they achieve the aim? If not, why not?**

3. Tax Impact Assessment

Summary of Impacts

| Exchequer impact (£m) | 2011-12 | 2012-13 | 2013-14 | 2014-15 | 2015-16 |
|---|--|---------|---------|---------|---------|
| | +/- | +/- | +/- | +/- | +/- |
| | <p>A Tax Information and Impact Note was published on the Office of Tax Simplification recommendations on 10 December 2013: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264596/6_Unapproved_employee_share_schemes.pdf</p> | | | | |
| Economic impact | The measure is not expected to have any significant economic impacts. | | | | |
| Impact on individuals and households | Proposals in relation to internationally mobile employees, could lead to more or less NICs being payable, depending upon the individual's circumstances. | | | | |
| Equalities impacts | HMRC does not hold data on the protected characteristics of those affected. However, internationally mobile employees are likely to have a similar protected characteristic profile to the general working population. | | | | |
| Impact on businesses and Civil Society Organisations | <p>Proposals in relation to IMEs could lead to more or less NICs being payable by businesses, depending upon the circumstances.</p> <p>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 on the particular circumstances) but the changes could impose one-off familiarisation and/ or compliance costs in some cases..</p> <p>Changes to the rules on IMEs 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 IMEs. However, it is also anticipated that long-term savings for business could arise from the increased consistency, clarity and simplicity these changes will provide.</p> | | | | |
| Impact on HMRC or other public sector delivery organisations | The costs or savings for HMRC in implementing these changes are expected to be negligible; although it is anticipated that there may be one-off costs arising from updates to guidance. | | | | |

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|----------------------|--|
| Other impacts | |
|----------------------|--|

4. Summary of Consultation Questions

As set out in Chapter 2, this consultation is taking forward a recommendation made by the OTS in relation to internationally mobile employees income from ERS to align the treatment of NICs with tax as closely as possible.

The Government would welcome views and evidence on the following:

- 1. What would be the impact of the proposed change for businesses and individuals, in terms of**
 - one-off; or**
 - on-going****NICs or administrative costs/savings?**
- 2. Businesses would need to track IMEs movement during the period between grant and vest, in different social security schemes, in order to assess liability to UK NICs from earned ERS income. What would the impacts on business be??**
- 3. Is the lead-in period before any new rules take effect, sufficient to allow businesses to understand and implement the changes?**
- 4. The draft regulations can be found at Annex B. Do you feel they achieve the aim? If not, why not?**

5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. Its purpose is to seek views and evidence on the potential costs, impacts and benefits of recommendations made by the OTS, before the Government decides whether to implement this recommendation.

How to respond

A summary of the questions in this consultation is included at Chapter 4.

Responses should be sent by 16 October 2014, by e-mail to raj.nayyar@hmrc.gsi.gov.uk or by post to: Raj Nayyar, 100 Parliament Street, London SW1A 2BQ.

Telephone enquiries should be made to 03000 586543 (from a text phone prefix this number with 18001).

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Amy Burgess, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Relevant Legislation

The NICs rules which provide that the full amount of ERS income constitutes earnings for the purpose of establishing liability for earnings-related NICs can be found at:

- Section 4(4)(a) of the Social Security Contributions and Benefits Act 1992.
- Regulation 22(7) of the Social Security (Contributions) Regulations (SSCR) 2001.

Provisions for certain payments to be disregarded in the calculation of earnings for the purpose of establishing liability for earnings-related NICs can be found at Part 9 of schedule 3 of the SSCR 2001.

Annex B: Draft Statutory Instrument

STATUTORY INSTRUMENTS

[2014] No. 0000

SOCIAL SECURITY

The Social Security (Contributions) (Amendment [No [X]]) Regulations [2014]

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - - - *6th April 2015*

The Treasury make the following Regulations in exercise of powers conferred by sections 3(2) and (3) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(1) and sections 3(2) and (3) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(2) and now exercisable by them(3).

The Secretary of State and the Department for Social Development(4) concur with the making of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Social Security (Contributions) (Amendment [No X]) Regulations [2014] and come into force on 6th April 2015.

Amendment of the Social Security (Contributions) Regulations 2001

2.—(1) The Social Security (Contributions) Regulations 2001(5) are amended as follows.
(2) In Schedule 3 (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions) in Part 9 (incentives by way of securities) after paragraph 17 insert—

(1) 1992 c.4 (“the 1992 Act”).
(2) 1992 c.7 (“the Northern Ireland Act”).
(3) Section 3 of the 1992 Act was amended, and the power to make regulations under it transferred to the Treasury with the concurrence of the Secretary of State, by paragraph 3 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 3 of the Northern Ireland Act was amended, and the power to make regulations under it transferred to the Treasury with the concurrence of the Department for Social Development, by paragraph 4 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671).
(4) The functions of the Department of Health and Social Services for Northern Ireland under the Northern Ireland Act were transferred to the Department for Social Development by article 8(b) of, and Part 2 of Schedule 6 to, the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. (NI) 1999 No 481).
(5) S.I. 2001/1004, amended by S.I. 2003/2085; there are other amending instruments but none is relevant.

“Payments made to internationally mobile employees

18.—(1) So much of any payment as equals the amount in sub-paragraph (3).

(2) For the purposes of calculating the amount in sub-paragraph (3) treat amounts which count as employment income under Chapters 2 to 5 of Part 7 of ITEPA 2003(6) as having been paid in equal instalments on each day of the “relevant period” as determined in accordance with section 41G of ITEPA 2003.

(3) The amount in this sub-paragraph is calculated by adding together every instalment which would satisfy the condition in sub-paragraph (4), (5) or (6) on the day on which the instalment is treated as having been paid.

(4) The condition in this sub-paragraph is that the instalment does not give rise to a liability to pay earnings-related contributions because the employed earner does not fulfil the prescribed conditions as to residence or presence in Great Britain or Northern Ireland (as the case requires) set out in paragraph (1) of regulation 145 or because the proviso in paragraph (2) of that regulation applies.

(5) The condition in this sub-paragraph is that the instalment does not give rise to a liability to pay earnings-related contributions because the employed earner is determined in accordance with Title II of Regulation No (EC) 883/2004(7) of the European Parliament and of the Council and Title II of Regulation No (EC) 987/2009 of the European Parliament and of the Council(8) to be subject only to the legislation of another EEA State or Switzerland.

(6) The condition in this sub-paragraph is that the instalment does not give rise to a liability to pay earnings-related contributions because the employed earner is determined to be subject only to the legislation of a country outside the United Kingdom pursuant to an Order in Council having effect under section 179 of the Administration Act(9).”

name

name

Date

Two of the Lords Commissioners of Her Majesty’s Treasury

The Secretary of State concurs as indicated in the preamble.

Signed by authority of the Secretary of State for Work and Pensions.

name

Minister of State

Date

Department for Work and Pensions

The Department for Social Development concurs as indicated in the preamble.

Sealed with the Official Seal of the Department for Social Development on []

(6) The definition of “ITEPA 2003” was inserted into section 122(1) of the 1992 Act by paragraph 178, and into section 121(1) of the Northern Ireland Act by paragraph 199, of Schedule 6 to ITEPA 2003.

(7) OJ No L 166, 30.4.04, p1; relevant amending instruments are Regulation No (EC) 988/2009 (OJ No L 284, 30.10.09, p43).and Commission Regulation No (EU) 465/2012 (OJ No L 149, 22.4.12, p4). Regulation 883/2004 is extended to the EEA by Annex VI of the Agreement on the European Economic Area (OJ No L 001, 3.1.94, p3), as amended by Decision 76/2011 of the EEA Joint Committee (OJ No L 262, 6.10.11, p33). Regulation 883/2004 is extended to Switzerland by Annex II of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons (OJ No L 114, 30.4.02, p6) (the “Swiss Agreement”), as amended by Decision 1/2012 of the Joint Committee established under the Swiss Agreement (OJ No L 103, 13.4.12, p51).

(8) Regulation OJ No L 284, 30.10.09, p1, amended by Commission Regulation No (EU) 465/2012 (OJ No L 149, 22.4.12, p4); there are other amending instruments but none is relevant. Regulation 987/2009 is extended to the EEA by Annex VI of the Agreement on the European Economic Area (OJ No L 001, 3.1.94, p3), as amended by Decision 76/2011 of the EEA Joint Committee (OJ No L 262, 6.10.11, p33). Regulation 987/2009 is extended to Switzerland by Annex II of the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the Free Movement of Persons (OJ No L 114, 30.4.02, p6) (the “Swiss Agreement”), as amended by Decision 1/2012 of the Joint Committee established under the Swiss Agreement (OJ No L 103, 13.4.12, p51).

(9) “the Administration Act” is defined in section 174 of the 1992 Act and section 170 of the Northern Ireland Act.



name
A senior officer of the Department for Social Development

EXPLANATORY NOTE

(This note is not part of the Regulations)

Chapters 2 to 5 of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”) make provision for the calculation of amounts that count as employment income in relation to employment-related securities (“ERS income”) for the purposes of establishing a charge to tax under Part 2 of ITEPA 2003.

Chapter 5B of Part 2 of ITEPA 2003 makes provision for special rules to apply to the ERS income of internationally mobile employees. The ERS income is apportioned between income that is taxable as it arises, income that is taxable if and when it is remitted and income that is not taxable. The apportionment is normally done on a time basis, depending on the employee’s residence status and the location of their duties over the period for which the ERS income is treated as having been earned.

Section 4(4)(a) of the Social Security Contributions and Benefits Act 1992 and Regulation 22(7) of the Social Security (Contributions) Regulations 2001 (“the Principal Regulations”) provide that the full amount of the ERS income constitutes earnings for the purpose of establishing liability for earnings-related national insurance contributions.

Schedule 3 to the Principal Regulations provides for certain payments to be disregarded in the calculation of earnings for the purpose of establishing liability for earnings-related national insurance contributions.

These Regulations amend the Principal Regulations. Regulation 2 inserts a new paragraph 18 into Part 9 of Schedule 3. This provides for a disregard for the proportion of the ERS income which is attributable to periods in which the individual would not otherwise be liable for earnings-related national insurance contributions (owing to residence conditions, EU social security rules or an international social security convention). The ERS income is treated as having been earned over the same period as applies for the purposes of Chapter 5B of Part 2 of ITEPA 2003.

[A Tax Information and Impact Note covering this instrument was published on 10th December 2013 alongside the draft legislation for Chapter 5B of Part 2 of ITEPA 2003 and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>. It remains an accurate summary of the impacts that apply to this instrument.]

Annex C: Draft Explanatory Memorandum

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO. X) REGULATIONS 2014

2014 No. [xxx]

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the Instrument**
 - 2.1 This instrument amends the Social Security (Contributions) Regulations (S.I. 2001/ 1004) (the Principal Regulations).
 - 2.2 This instrument relates to employment-related securities (ERS) income earned by internationally mobile employees (IMEs). It introduces a further instance where payments are disregarded in calculating earnings to establish liability for earnings-related National Insurance contributions (NICs). The new disregard applies to the proportion of ERS which is attributable to periods when the individual would not otherwise be within the UK social security system (either because domestic law residence conditions are not met or because the individual is subject exclusively to foreign social security legislation under international social security rules).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Income received by an employee or office-holder is taxed as 'employment income' within the meaning of section 7 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003). In many cases a person's employment income will consist wholly or mainly of 'general earnings'. However, the legislation also identifies certain particular types of income known as 'specific employment income'.
 - 4.2 The complex forms which ERS can take mean that the general earnings charge may not capture all aspects of the taxable value of ERS. A special ERS taxation regime therefore applies to treat this additional value as specific employment income. This regime is found within Part 7 of ITEPA 2003.
 - 4.3 Charges arising under Part 7 may arise at either the time of the acquisition of the ERS, or more commonly on the occasion of a post-acquisition 'chargeable

event' (i.e. where value passes to the employee after acquisition, such as the exercise of a share option).

- 4.4 The principal charging provisions in Part 7 only applies if the employee was resident in the UK at the time of acquisition. It does not matter whether the employee was resident at the date of the later chargeable event.
- 4.5 Finance Act 2014 has amended these rules so that Part 7 will apply to all ERS income, whether or not the employee was resident in the UK at the time of acquisition. It has also introduced new Chapter 5B of Part 2 of ITEPA 2003 which establishes the period over which Part 7 income can be regarded as accruing (broadly, the time between acquisition and the later chargeable event). The Part 7 income is then apportioned. The apportionment is normally done on a time basis, with the part which relates to UK duties being subject to income tax, and the part which relates to overseas duties being excluded from the tax charge. These rules will come into effect on 6 April 2015.
- 4.6 Current NICs legislation provides that the full amount of the ERS income (calculated under Part 7) is treated as earnings and subject to earnings-related NICs. This legislation is unaffected by Chapter 5B of Part 2 of ITEPA 2003, so the full, un-apportioned, amount of the Part 7 income is subject to earnings-related NICs.
- 4.7 These regulations will ensure the tax and NICs position is aligned as far as possible. However, due to the conditions of various international social security treaties and agreements, the complete alignment of tax and NIC rules would create a risk of double charging for some IMEs.
- 4.8 This instrument apportions the ERS income over the same period as Chapter 5B of Part 2 of ITEPA 2003. It then disregards the proportion of the ERS income which is attributable to days when the individual was not in the UK social security system (due to not meeting domestic law conditions relating to residence, or being exempt from NICs due to international social security legislation). That proportion of the ERS income will therefore not be subject to a NIC liability.

5. Territorial Extent and Application

- 5.1 The instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why

- 7.1 The measures within Chapter 5B of Part 2 ITEPA will give effect to one of the recommendations made by the OTS in its report on ‘unapproved employee share schemes’ published in January 2013 to support the Government’s objective to simplify the tax system.
- 7.2 The OTS recommended that there should be certain and consistent treatment of each type of award made to inbound and outbound employees. Also, that all share plans be treated consistently from a residence perspective – the OTS preferred option being to change the residence rules so that these rules apply on an earnings basis. The aim of the OTS recommendation being to align the tax treatment of ERS awarded to IMEs more closely with that for other forms of employment income earned by IMEs.
- 7.3 Specifically with regard to NICs, OTS pointed out that the consensus approach is to apply social security based on the economic activity in each country, which follows the Organisation for Economic Co-operation and Development model. The OTS also referred to work done by HMRC and external stakeholders which had identified a desirability of moving to apportionment for NICs to align as closely as possible with tax treatment, but acknowledged this had to be subject to international social security treaty requirements.
- 7.4 For income tax ERS income is apportioned on a time basis, with the part which relates to UK duties being subject to income tax, and the part which relates to overseas duties being excluded from the liability. Therefore, complete alignment between the tax and NICs creates unfairness and the risk of double-charging of NICs (for example, where income tax is chargeable on ERS in the UK, but the employee is still within a foreign social security scheme rather than NICs).
- 7.5 The amendment in this instrument ensures that any ERS income which is attributable to days when the individual was not in the UK social security system will be disregarded and not subject to a NIC liability. This introduces greater simplicity and fairness, and produces the best fit with international social security treaties which will mitigate the risk of a social security double charge.

Consolidation

- 7.6 There are currently no plans to consolidate the Principal Regulations.

8. Consultation Outcome

- 8.1 HMRC consulted on five recommendations made by the OTS in its review of non-tax advantaged (or ‘unapproved’) employee share schemes (including the measure relating to internationally mobile employees). Consultation took place from 14 May 2013 to 16 August 2013.
- 8.2 Each response was carefully considered and summarised in a government response to consultation document, which can be accessed at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/264669/131209_OTIS_2_summary_of_responses_Final2.pdf

- 8.3 [A further consultation relating specifically to the amendment in this instrument was carried out between XX and XX.]

9. Guidance

- 9.1 HMRC will update the guidance it provides to employers, employees and agents as appropriate.

10. Impact

- 10.1 An impact assessment has not been prepared as there is expected to be a negligible impact on business.
- 10.2 This measure is one of a package which simplifies the legislation used by businesses which operate unapproved share schemes.
- 10.3 The costs or savings for HMRC in implementing these changes are expected to be negligible.
- 10.4 A Tax Information and Impact Note covering this instrument was published on 10th December 2013 alongside the draft legislation for Chapter 5B of Part 2 of ITEPA 2003, and is available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

11. Regulating Small Businesses

- 11.1 The provisions of this instrument will apply to all businesses that award employment-related securities (such as shares) or employment-related securities options to internationally mobile employees, and the internationally mobile employees who receive these awards. It will also be of interest to payroll and share plan administrators.

12. Monitoring & Review

- 12.1 HMRC will monitor the practical effects of this legislation to ensure the objectives of it are met.

13. Contact

Raj Nayyar at HMRC, Telephone 03000 586543 or e-mail: raj.nayyar@hmrc.gsi.gov.uk