

DRAFT

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY CONTRIBUTIONS (LIMITED LIABILITY
PARTNERSHIP) 2104**

[2014] No. [XXXX]

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

This instrument provides for certain members of a Limited Liability Partnership (LLP) - salaried members - to be treated for the purposes of the Social Security Contributions and Benefits Act 1992 (SSCBA) as employed in employed earner's employment. The consequence of this is that a Class 1 or Class 1A National Insurance contributions (NICs) charge arises on their earnings or benefits from that employed earner's employment.

3. Matters of interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The instrument is the first to be made under Section 4AA SSCBA and will have retrospective effect from 6 April 2014.

4.2 The instrument is being made to ensure that a Class 1 and Class 1A NICs charge arises on payments and other benefits to salaried members, who are treated for tax purposes as employees by virtue of section 863A ITTOIA 2005 (see Part 1, Schedule 13, Finance (No 2) Bill 2014).

4.2.1 The instrument provides that, where an individual is treated for tax purposes as being employed under a contract of service, the individual will be treated as an employed earner for NICs purposes and subject to Class 1 primary contributions.

4.3 The instrument also provides that the LLP will be the secondary contributor in relation to the salaried member for the purposes of Class 1 secondary and Class 1A NICs and modifies the SSCBA 1992 to provide that salaried members are employees and the LLP is their employer for the purposes of the statutory payment regimes.

4.4 The instrument also prevents a double charge arising to an individual that falls within these provisions and those in the Social Security Contributions

(Intermediaries) Regulations 2000. Where that occurs, these provisions will take priority.

5. Territorial Extent and Application

This instrument applies to Great Britain

6. European Convention on Human Rights

7.1 The [Name of Minister or Name of Authority] has made the following statement regarding Human Rights:

[In [my/our] view the provisions of the [Title of instrument] are compatible with the Convention rights *or* Free text]

7. Policy background

• What is being done and why

7.1 HMRC is extending the PAYE charge to certain members of an LLP who are currently treated as self employed earners.

7.2 Members of an LLP are treated for tax and NICs purposes as if they are self employed. The members benefit from the rules applying to the self employed and the LLP does not have to pay employers' NICs.

7.3 Some LLPs are accepting as members individuals who would be employees if the LLP structure did not exist. Where a member ("M") of an LLP satisfies certain conditions (set out at new sections 863A to 863G of ITTOIA 2005) they will be treated as if they were employees of the LLP and the LLP will be treated as their employer for the purposes of employment taxes (PAYE and NICs). The conditions are :

- Condition A is that it is reasonable to expect that at least 80% of the total amount payable by the LLP in respect of M's performance of services for the LLP will be fixed, or if variable, variable without reference to, or in practice unaffected by, the overall profits or losses of the LLP ('disguised salary').
- Condition B is that the mutual rights and duties of the members and the LLP and its members do not give M significant influence over the affairs of the LLP.
- Condition C is that M's contribution to the LLP is less than 25 per cent of the disguised salary which it is reasonable to expect will be payable by the LLP in a relevant tax year in respect of M's performance of services for the LLP.

7.4 The Regulations provide that where members meet all three of these conditions,(and which includes the case where M has interposed an intermediary between themselves and the LLP), they will also be treated as employed earners for the purposes of NICs. It also ensures that where

individuals are treated as employed earners, they will be entitled to statutory payments such as sick pay and maternity pay.

- **Consolidation**

There is no intention to consolidate these regulations

8 Consultation outcome

- 8.1 HMRC carried out a formal consultation between May and August on changing certain partnership tax rules - Partnerships: A review of two aspects of the tax rules. The document made clear that legislation removing the presumption of self-employment and introducing a specific statutory test for salaried members would be introduced as part of Finance Bill 2014 and would have effect from 6 April 2014.
- 8.2 About 110 responses were received. These focused on whether the status of members should be left to traditional employment status tests or whether a statutory definition is needed
- 8.3 A response document was issued on 10 December 2013 alongside draft Finance Bill 2014 legislation. The response document reaffirmed the Government's intention to introduce a specific statutory test and that the legislation would take effect from 6 April 2014.

Technical consultation on the draft legislation concluded on 4 February 2014. Revised draft legislation was published on 7 March and incorporated as part of Finance Bill 2014 on 27 March 2014: pages:

<https://www.gov.uk/government/collections/salaried-members-revised-draft-finance-bill-2014-legislation>

9. Guidance

- 9.1 Guidance was also published on 27 March 2014 and is available on the GOV.UK website: note: <https://www.gov.uk/government/publications/salaried-member-rules-legislation-day-technical-note-and-guidance>

10. Impact

- 10.1 There will be an impact on LLPs that have salaried members only. The Partnerships Review measure comprises a number of elements which will bring in total tax and NICs revenue of £3.27 billion over the forecast period to 2018-19.
- 10.2 A Tax Information and Impact Note covering this instrument was published on 10 December 2013 and is available on the HMRC website at <http://www.hmrc.gov.uk/tiin/disguised-emp.pdf>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

- 11.1 This statutory instrument will impact across businesses which operate as LLPs and this includes small business.
- 11.2 The wider policy is aimed at all sectors that use the LLP structure. To exempt small business would deny the wider policy and potentially enable them to avoid tax and national insurance contributions in comparison with larger LLP's.

12. Monitor and review

- 12.1 The purpose of this instrument is to remove the use of LLPs to disguise what would otherwise be an employed earner status for NICs purposes.
- 12.2 HMRC will monitor the effectiveness of the instrument to ensure the objectives are met.

13 Contact

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