

## EXPLANATORY MEMORANDUM TO

### THE INFECTED BLOOD SCHEMES (APPLICATION OF SECTIONS 731, 733 AND 734 OF THE INCOME TAX (TRADING AND OTHER INCOME) ACT 2005) ORDER 2017

2017 No. 904

#### 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 The tax rules charge income tax on periodical payments of compensation that are annual payments unless the payments fall into a category which the rules specifically exempt from liability.
- 2.2 New schemes are being established in England, Wales and Northern Ireland for the purpose of making payments and providing support to, or in respect of, individuals infected with Hepatitis C, HIV or both, through NHS treatment with contaminated blood or blood products. This Order exempts from tax the periodical payments made by these new schemes.
- 2.3 This means that the scheme administrators will not need to deduct income tax from the payments and the payments will not be part of the recipients' taxable income.

#### 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 Income tax is charged on certain annual payments under Chapter 7 of Part 5 of the Income Tax (Trading and Other Income Act) 2005 ("ITTOIA 2005").
- 4.2 Sections 731 to 734 of ITTOIA 2005 deal with exemption from the charge to income tax. All periodical payments in respect of personal injuries made under Court orders or agreements that settle claims for damages are exempt. Similarly, payments from annuities purchased to meet an award made by the Criminal Injuries Compensation Authority are exempt.
- 4.3 Section 732(2) ITTOIA 2005 includes a power for the Treasury to make an Order to apply the exemption to periodical payments of compensation for personal injury under other schemes or arrangements.

- 4.4 Since 1988, successive governments have set up various schemes to provide financial support in respect of individuals infected with Hepatitis C, HIV or both through NHS treatment with contaminated blood products. The longstanding position has been that such ex gratia payments should be exempt from tax.
- 4.5 There are Orders currently in force which give effect to this position by applying the exemption at sections 731, 733 and 734 ITTOIA 2005 to compensation payments under existing schemes:
- The MFET Limited (Application of Sections 731, 733 and 734 of the Income Tax (Trading and Other Income) Act 2005) Order 2010 (SI 2001/673), and
  - The Skipton Fund Limited (Application of Sections 731, 733 and 734 of the Income Tax (Trading and Other Income) Act 2005) Order 2011 (SI 2011/1157) as amended by The Skipton Fund Limited (Application of Sections 731, 733 and 734 of the Income Tax (Trading and Other Income) Act 2005) (Amendment) Order 2012 (SI 2012/1188).
- 4.6 The Department for Health consulted on changes to the existing schemes. Following the consultation, changes were announced in a press release issued in July 2016. The press release confirmed that payments would continue to be tax exempt. The existing schemes implemented the changes to the payments made to beneficiaries in England, Wales and Northern Ireland by March 2017.
- 4.7 The Scottish Government carried out their own review and introduced a new scheme for Scotland in April 2017. This new scheme consolidated the schemes previously making payments across the UK into one new scheme for Scotland while the existing schemes continued making payments for the rest of the UK. The Scottish Infected Blood Support Scheme (Application of Sections 731, 733 and 734 of the Income Tax (Trading and Other Income) Act 2005) Order 2017 (SI 2017/329) extends the tax exemption to payments made under the new Scottish scheme.
- 4.8 New schemes are now being introduced, one each for England, Wales and Northern Ireland, consolidating the payments previously made by the existing schemes which originally made payments to beneficiaries across the whole of the UK.
- 4.9 This Order is being made to ensure the tax exemption applies to periodic payments made under the newly established schemes in England, Wales and Northern Ireland.

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

## **7. Policy background**

### *What is being done and why*

- 7.1 New Infected Blood Schemes will be established by the Secretary of State for Health and Pensions, the Welsh Ministers and the Department of Health in Northern Ireland. The new schemes will be administered by:

- the NHS Business Services Authority in England,
  - the Velindre NHS Trust in Wales and
  - the Regional Business Services Organisation in Northern Ireland.
- 7.2 In the absence of a specific exemption the periodical payments made by the three new scheme administrators would fall within the tax rules for ‘annual payments’. The payments would be taxable income of the recipients and the scheme administrators would have to deduct income tax from the amounts paid.
- 7.3 The Order is expected to apply to approximately 2,680 beneficiaries in England, 180 in Wales and 80 in Northern Ireland. These beneficiaries currently receive periodical payments and benefit from legislation in place covering existing schemes (referred to in paragraph 4.5).
- 7.4 This Order ensures that periodical payments from the new Infected Blood Schemes to beneficiaries in England, Wales and Northern Ireland are exempt from income tax, in the same way as periodical payments from the existing schemes to beneficiaries across the UK, including the new Scottish scheme (referred to in paragraph 4.7), are exempt from income tax.

#### *Consolidation*

- 7.5 Not applicable.

### **8. Consultation outcome**

- 8.1 This change is being introduced to ensure the existing exemption applies to the new scheme administrators for England, Wales and Northern Ireland. No formal consultation has been carried out by HMRC because this instrument makes only minor and uncontroversial changes to the legislation, which will affect a small number of people and simply continues the existing policy of exempting the compensation payments from tax.

### **9. Guidance**

- 9.1 Guidance on the change to the legislation will be included in HMRC’s Savings and Investment Manual.

### **10. Impact**

- 10.1 There is no impact on business, 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 will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

### **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

### **12. Monitoring & review**

- 12.1 The policy will be kept under review through communication with stakeholders affected by the measure.

### **13. Contact**

- 13.1 Jenny McDougall at HMRC Telephone: 03000 593627 or email: [jenny.mcdougall@hmrc.gsi.gov.uk](mailto:jenny.mcdougall@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.