

EXPLANATORY MEMORANDUM TO
THE POST OFFICE HORIZON SHORTFALL SCHEME TOP-UP PAYMENTS (TAX EXEMPTIONS) REGULATIONS

2023 No. 772

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty’s Revenue and Customs (HMRC) on behalf of His Majesty’s Treasury and is laid before the House of Commons by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of this instrument is to exempt certain top-up payments made under the Post Office Limited’s Horizon Shortfall Scheme (HSS) from income tax and capital gains tax (CGT).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Schedule 15 to the Finance Act (FA) 2020 contains a regulation-making power for the Treasury, by regulations, to provide that no liability to income tax and CGT arises on “qualifying payments”. This includes compensation payments made by or on behalf of the government or a public authority where they are specified in regulations made by the Treasury by Statutory Instrument.

6.2 This instrument is being made to set out the tax treatment of HSS top-up payments. These are recognised as qualifying payments under Paragraph 2(5) of Schedule 15 FA 2020. The instrument will provide that the payments are exempt from Income Tax and CGT under Paragraphs 3(5) and 4(3)(c) of Schedule 15 FA 2020 respectively.

6.3 The exemptions will be with prospective effect from 1 August 2023.

7. Policy background

What is being done and why?

- 7.1 Post Office Limited (POL), a wholly owned government company, set up the HSS to compensate postmasters who repaid shortfalls that may have arisen due to faults in its Horizon IT system and potentially also suffered consequential losses as a result.
- 7.2 HSS payments are calculated on a gross basis, meaning they are calculated without deduction of tax or NICs which would have been paid on earnings at the time. The compensation paid is taxable. HSS compensation is paid in a single year, meaning some payments may have been charged at a higher tax rate than they would have been had postmasters earned the equivalent amounts over several years.
- 7.3 Payments in other Post Office Horizon compensation schemes - the Group Litigation Order Compensation Scheme (GLO) and Overturned Historical Convictions (OHC) compensation arrangement – have been calculated and paid on a net basis with no further tax or NICs liabilities. Interest on the GLO and OHC schemes is not taxable, but was calculated on the net amount of compensation, whereas in HSS the interest is calculated on the gross amount of compensation, and is taxable.
- 7.4 In order to better equalise the HSS tax position with other schemes, the government announced on 19 June 2023, through a written ministerial statement, its intention to fund top-up payments to compensate HSS claimants for amounts taxed at a higher rate.
- 7.5 As income tax may otherwise be due on elements of the top-up payment, the government wishes to exempt them from income tax and put beyond doubt that the payments are not subject to CGT.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are no plans for consolidation.

10. Consultation outcome

- 10.1 No formal consultation exercise has been held as these are minor changes which are wholly relieving to the taxpayer.

11. Guidance

- 11.1 Guidance will be provided via the body administering the scheme.

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 because it contains no substantive changes to tax policy.

13. Regulating small business

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

14. Monitoring & review

- 14.1 There are no plans to monitor or review the instrument.
- 14.2 The instrument does not include a statutory review clause because it does not make or amend regulatory provisions that relate to business activity.

15. Contact

- 15.1 Henry Roe at HMRC Telephone: 03000 585877 or email: henry.roe@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Philip Batchelor, Deputy Director for Income Tax Policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.