EXPLANATORY MEMORANDUM TO

THE INCOME TAX (QUALIFYING MAINTENANCE PAYMENTS) (AMENDMENT) REGULATIONS 2022

2022 No. 169

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument makes changes to the Income Tax Act 2007 (the Act) to ensure that qualifying maintenance payments made pursuant to a United Kingdom (UK) court order or a written agreement under the law of the UK or a part of the UK, continue to qualify for income tax relief. The legislation currently provides relief only for qualifying maintenance payments (as defined under section 454 of the Act) made pursuant to an order made by a court in a "member State" or a written agreement under the law of a "member State" of the European Union. Following the UK's withdrawal from the European Union, the UK is no longer a member State.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 Regulation 1(2) provides that regulation 2 has retrospective effect from implementation period (IP) completion day, which is the end of the transition period. Section 90(3) of the Finance Act 2019 enables regulations that satisfy the conditions set out in paragraphs (a) and (b) of that subsection to provide that they have effect from exit day. Exit day is defined in section 20(1) of the European Union (Withdrawal) Act 2018 as 31 January 2020 at 11.00pm and IP completion day is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 as 31 December 2020 at 11.00pm.

3.2 Prior to and during the transition period, the expression "member State" in UK law included the UK. From the end of the transition period, the expression "member State" no longer includes the UK. It is therefore necessary to give the amendments set out in this instrument retrospective effect from the end of the transition period.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury has made the following statement regarding Human Rights:

"In my view the provisions of the Income Tax (Qualifying Maintenance Payments) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Income tax relief is available under Chapter 5 of Part 8 of the Act for certain "qualifying maintenance payments" made to a former spouse or civil partner for the maintenance of that spouse or civil partner or their children. There are various eligibility criteria for the relief to apply, as set out under section 454 of the Act. This includes that the payment must be made under an order made by a court in a "member State" or under a written agreement, the law applicable to which is the law of a "member State or part of a member State".

6.2 Although the UK withdrew from the European Union on exit day, the use of the expression "member State" in UK law continued to derive its meaning from the European Communities Act 1972 during the transition period and during this time the UK was treated as though it were a member of the European Union. The transition period ended on 31 December 2020 at 11.00 pm and from this point the UK is no longer treated as if it were a "member State".

6.3 As a result, payments made pursuant to UK court orders or written agreements under UK law no longer qualify for the relief. Section 90(1)(a) of the Finance Act 2019 affords the Treasury the power to amend legislation *"for the purpose of maintaining the effect of any relevant tax legislation on the withdrawal of the United Kingdom from the EU"*. This instrument will amend section 454(4) of the Act so that it refers to the UK in paragraphs (a) and (b).

6.4 Section 454(7) of the Act clarifies that the reference in section 454(4) to *"an order made by a court in a member State includes a reference to a maintenance calculation"*. As maintenance calculations are defined in section 454(8) as meaning a maintenance calculation made under the Child Support Act 1991 or a maintenance assessment made under the Child Support (Northern Ireland) Order 1991, this instrument will also amend section 454(7) by substituting "the United Kingdom" for "a member State" in this subsection.

6.5 The amendments will have retrospective effect from the end of the transition period. This will restore the position prior to the end of the transition period, so that taxpayers making qualifying maintenance payments pursuant to a UK court order or written agreement under UK law, who would otherwise have qualified for tax relief prior to the end of the transition period, continue to do so.

7. Policy background

What is being done and why?

7.1 Following divorce, dissolution, or annulment of a marriage or civil partnership, one party to the marriage or civil partnership may pay maintenance to the other party, either for that individual or in respect of their children.

7.2 Income tax relief for such maintenance payments was largely withdrawn for payments made after 5 April 2000. However, a limited relief is still available where one spouse or civil partner was born before 6 April 1935 and the conditions outlined in Chapter 5 of Part 8 of the Act are met. To qualify for this relief the payments must be made for the maintenance of an ex-spouse or former civil partner (provided they are not remarried or in a new civil partnership) or a child who is under the age of 21.

7.3 Relief is given to the individual making the payment as a ten per cent income tax deduction on qualifying maintenance paid in the tax year on the lower of (i) the total amount paid; and (ii) the relevant amount specified for that tax year (£3,530 for 2021-22 resulting in a maximum income tax relief of £353). The relevant amount for the 2022-23 tax year is £3,640.

7.4 The Act currently provides relief for qualifying maintenance payments made pursuant to an order made by a court in a "member State" or a written agreement under the law of a "member State" of the European Union. The UK ceased to be a "member State" of the European Union after the end of the transition period. This results in maintenance payments made pursuant to UK court orders or written agreements under UK law, that would have otherwise qualified for tax relief prior to the end of the transition period, no longer being eligible for tax relief. The government therefore wishes to confirm that maintenance payments made under UK court orders and written agreements continue to qualify for tax relief following the end of the transition period.

7.5 The instrument will have retrospective effect from the end of the transition period to reflect that the policy intention for the legislation to apply equally to court orders and written agreements made in the UK and European Union member States did not change as a result of the UK's withdrawal from the European Union. Maintenance payments made pursuant to an order made by a court in a "member State" or a written agreement under the law of a "member State" of the European Union will be unaffected by this instrument and continue to be eligible for tax relief.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 The law provided for income tax relief for certain "qualifying maintenance payments" made pursuant to "member State" court orders or agreements governed by the law of a member State or part of a member State. Whilst the UK was a member of the European Union and during the transition period, the term "member State" included the UK.

Why is it being changed?

7.7 Following the UK's withdrawal from the European Union and the end of the transition period, the term "member State" referenced in the eligibility criteria at section 454(4) of the Act no longer includes the UK. Therefore, maintenance payments made under UK court orders or UK law governed agreements that otherwise meet the necessary eligibility criteria no longer qualify for income tax relief.

What will it now do?

7.8 The instrument will amend Chapter 5 of Part 8 of the Act with retrospective effect to ensure that maintenance payments made under UK court orders or written agreements under the law of the UK (that also meet the other eligibility criteria) continue to be eligible for income tax relief now that the UK is no longer considered to be a "member State" following the end of the transition period.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because

prior to the end of the transition period, the UK was still treated as a member State of the European Union and so taxpayers making qualifying maintenance payments under UK court orders or written agreements under UK law continued to qualify for income tax relief.

8.2 Now that the end of the transition period has passed and the UK is no longer treated as a member State of the European Union, such taxpayers are no longer eligible for relief. This was not the policy intention and legislative change is therefore required to restore the position prior to the end of the transition period.

9. Consolidation

9.1 There are no plans to consolidate the legislation which is amended by this instrument. This instrument amends section 454(4) and (7) of the Act. However, it would not be proportionate to carry out a consolidation exercise of that Act on the basis of the minor revisions contained in this instrument.

10. Consultation outcome

10.1 The changes under this instrument are minor and wholly relieving to the taxpayer. The changes do not create a change in policy, but instead ensure the continuation of current tax treatment. For these reasons no consultation has been carried out.

11. Guidance

11.1 No guidance is required as the instrument will maintain current tax treatment.

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 as 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 the instrument does not regulate business.

15. Contact

15.1 Jeffrey Jordan at Her Majesty's Revenue and Customs, Telephone: 03000 579631 or email: jeffrey.jordan@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Jackie McGeehan, Deputy Director for Income Tax Policy, at Her Majesty's Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.