EXPLANATORY MEMORANDUM TO

THE SPORTING TESTIMONIAL PAYMENTS (EXCLUDED RELEVANT STEP) REGULATIONS 2016

2016 No. 1250

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument disapplies Chapter 2 of Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). This ensures that such payments are only taxable under section 226E of ITEPA, which treats them as earnings, subject to the limited exemption in section 306B of ITEPA. It prevents the possibility of double taxation under both the provisions of Chapter 12 of Part 3 and Part 7A ITEPA.

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 These regulations are made by the Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by section 554Y(1) and (3) ITEPA (power to exclude other relevant steps). The taxing provisions for income earned from non-contractual or non-customary sporting testimonials will come into effect from 6 April 2017 for testimonials announced on or after 25 November 2015. The necessary provisions were enacted in Finance Act 2016.

4.2 These effect of these regulations is to disapply Chapter 2 of Part 7A to ensure that the charge to tax only applies through section 226E of ITEPA.

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 During the technical consultation on the draft legislation which was subsequently enacted as section 226E ITEPA, it was identified there was a possibility that double taxation on non-contractual and non-customary sporting testimonials could occur. There is specific legislation relating to the provision of income through third parties, such as an independent testimonial committee, within Part 7A ITEPA.

7.2 It was agreed to make the necessary amendments using the powers available in section 554Y ITEPA. These regulations disapply Chapter 2 of Part 7A ITEPA so that employment income provided through third parties (treatment of a relevant step of income tax purposes) does not apply by reason of a relevant step if the relevant step is the making of a sporting testimonial payment.

7.3 These regulations are being produced now to ensure that the provision is in place on 6 April 2017, the date from which the income arising from events held in respect of non-contractual or non-customary sporting testimonials announced on or after 25 November 2015 is brought into the charge for income tax. The Regulations refer to these dates in order to ensure that they reflect the circumstances in which sections 226E and 306B ITEPA apply. There is no retrospective provision as they only apply in relation to payments made from events taking place after 6 April 2017.

8. Consultation outcome

8.1 These regulations are being produced in response to the outcome of consultation held following publication of draft legislation on 9 December 2015.

9. Guidance

9.1 The relevant HMRC guidance will be amended in line with these regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be negligible.

10.2 Up to 220 independent testimonial committees, which are temporarily formed each year to organise non-contractual or non-customary sporting testimonial events, are expected to be affected by the changes. All committees will incur a one-off cost of becoming familiar with the changes, and those affected will also need to monitor proceeds to identify if the exempted amount has been exceeded.

10.3 If the exemption limit is exceeded, the committee will incur an additional administrative burden in order to operate PAYE on some of the proceeds and report tax deductions to HMRC by a Real Time Information (RTI) return. The committee will also need to monitor costs for corporation tax purposes. Overall, these costs are expected to be negligible.

10.4 There is no impact on the public sector.

10.5 A Tax Information and Impact Note covering this instrument was published on 16th March 2016 alongside the Finance (No. 2) Bill (now the Finance Act 2016) and is available on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses other than independent testimonial committees.

12. Monitoring & review

12.1 This policy will be monitored and assessed alongside other measures in the Government's package of personal tax and benefits changes.

13. Contact

13.1 Mrs Su McLean-Tooke at HMRC telephone: 03000 521589 or email: employmentincome.policy@hmrc.gsi.gov can answer any queries regarding the instrument.