EXPLANATORY MEMORANDUM TO

THE SCOTLAND ACT 2016 (INCOME TAX CONSEQUENTIAL AMENDMENTS) REGULATIONS 2017

2017 No. 468

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs on behalf of HM 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 further Scottish income tax powers (FSITP) introduced in the Scotland Act 2016 (c. 11) enable the Scottish Parliament to set the income tax rates and thresholds applicable to the non-savings and non-dividend income of Scottish taxpayers. FSITP will be first used to set rates and thresholds for the 2017-2018 tax year. These provisions have implications for other areas of the Income Tax system.

2.2 This instrument makes consequential amendments to ensure certain income tax rules which currently refer to rates and thresholds operate as intended with the introduction of FSITP.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 These Regulations are the first use of the powers in section 15(8) and (9) of the Scotland Act 2016.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

4.1 These Regulations amend a number of areas of the Income Tax Acts to deal with consequential changes needed to allow for the potential differences between UK income tax rates and thresholds and the income tax rates and thresholds applicable to Scottish taxpayers, in respect of non-savings and non-dividend income.

4.2 These amendments will work alongside other amendments consequential to the introduction of the Scottish rate of income tax, in April 2016, which were made in Part 2 of Schedule 38 of the Finance Act 2014, the Income Tax (Pay As You Earn) (Amendment No.3) Regulations 2015 (S.I. 2015/1667) and The Scottish Rate of Income Tax (Consequential Amendments) Order 2015 (S.I.2015/1810).

TNA/EM/10-2015.1

5. Extent and Territorial Application

5.1 This 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 The Financial Secretary to the Treasury, Jane Ellison, makes the following statement regarding Human Rights: "In my view the provisions of the Scottish Income Tax (Consequential Amendments) Regulations 2017 are compatible with the Convention rights".

7. Policy background

What is being done and why

7.1 The Scotland Act 2016 devolves further Scottish income tax powers (FSTIP) to the Scottish Parliament, building on its existing power to set a Scottish rate of income tax (SRIT). FSITP commence for the 2017-18 tax year and require a Scottish basic rate of income tax to be set for each tax year and enable, in addition, other rates and thresholds for income tax to be set which could vary in amount and name from those set by the UK Parliament.

7.2 These amendments make the necessary consequential changes to reflect FSITP, setting out how aspects of Income Tax will operate where an individual is a Scottish taxpayer.

Pensions - relief at source

7.3 The instrument makes consequential changes to the rules covering relief at source on pension contributions to registered schemes. Section 192 of Finance Act 2004 (FA 2004) is amended to ensure that Scottish taxpayers who pay income tax at a higher Scottish rate than the Scottish basic rate will (on the making of a claim) be entitled to relief, for their contributions, reflective of Scottish income tax rates and thresholds.

Special tax charges

7.4 Chapter 5 of Part 4 of FA 2004 contains a number of special tax charges. The majority of these are designed to generate a charge which is based broadly on current rates, so actual percentages are used in the legislation. In two areas though there are specific references to rates and thresholds. This instrument amends section 227 (the annual allowance charge) and section 237B ('scheme pays' rules) to ensure that, where the individual is a Scottish taxpayer, references to rates and thresholds are the applicable Scottish rates and thresholds.

Residuary income of a deceased estate

7.5 This instrument makes consequential changes to sections 669 of the Income Tax (Trading and Other Income Tax 2005 (c. 5) which provides for a reduction in the residuary income of a deceased's estate in certain circumstances, These changes reflect the fact that the Scottish Parliament may now set Scottish rates of income tax that do not correspond to the rates that apply to the remainder of the UK.

Payments from settlor-interested trusts

7.6 Section 685A of the Income Tax (Trading and Other Income Tax 2005 (c. 5) provides for a tax credit where a person other than the settlor receives an annual payment from a settlor-interested trust. This instrument amends that provision so that the credit for a Scottish taxpayer is calculated at the highest Scottish rate rather than the Scottish additional rate which was applicable prior to 2017-18.

Social security lump sum

7.7 Section 7 of the Finance (No. 2) Act 2005 (c.22) which imposes a charge to income tax where a person becomes entitled to a social security lump sum is amended to ensure that, in the case of a Scottish taxpayer, the charge is calculated by reference to the Scottish basic rate and any other higher Scottish rates that may be set.

Gift Aid

7.8 Section 414 of the Income Tax 2007 (c. 3) which deals with relief for gifts to charity is amended so that, in the case of a Scottish taxpayer who has made a qualifying donation, the Scottish rate limits will be increased by the grossed up amount of the gift in addition to the basic and additional rate limits applicable elsewhere in the UK

Consolidation

7.9 As this instrument amends primary legislation, there is no consolidation required.

8. Consultation outcome

8.1 In accordance with the Government's Tax Consultation Framework, on 30 November 2016, a draft of this instrument accompanied by a Technical Note "Clarifying the Scope of the Scottish Rate of Income Tax" was published on the Gov.UK website for comment.

8.2 No substantive comments were received following publication of the instrument and Technical Note.

9. Guidance

9.1 Guidance covering all those areas amended by this instrument will be updated prior to the commencement of FSITP to reflect these changes.

10. Impact

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

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment covering this instrument was published on 28 May 2015 alongside the draft clauses and explanatory notes for the Scotland Bill and is available on the website at http://www.parliament.uk/documents/impact-assessments/IA15-004.pdf. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses but are expected to have no impact upon them.

12. Monitoring & review

12.1 The legislation contained within this instrument will be monitored and reviewed as appropriate within the context of the wider legislative scheme on SRIT.

13. Contact

13.1 Simon Moulden at HMRC can answer any queries regarding the instrument tel. 03000 585 448 or email: simon.moulden@hmrc.gsi.gov.uk