

## [07.01.05] HEPATITIS C - Compensation Payments

*Reviewed February 2017*

### 1. Introduction

Section 191 Taxes Consolidation Act 1997 exempts from income tax and capital gains tax compensation payments made by the Hepatitis C and HIV Compensation Tribunal or similar payments awarded following the institution of civil action for damages in respect of personal injury.

### 2.1 Exemption

These payments are treated for income tax purposes and capital gains purposes in all respects as if they arose out of a civil action for damages for personal injury. The provisions of Section 189 Taxes Consolidation Act 1997 dealing with personal injury awards apply. Any investment income (Case 111 Case IV or Case V of Schedule D, Schedule C or Schedule F) arising from the compensation payment is exempt from income tax and capital gains tax if the individual is **permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself**. The investment income and gains must be greater than 50 per cent of the individual's total income and gains.

[Where it is medically certified that an individual who is suffering from a degenerative condition which will ultimately cause a permanent and total incapacity by reason of mental or physical infirmity and the condition gave rise to the compensation payment, Revenue accepts that the requirements of subsection 1(a), section 189 Taxes Consolidation Act 1997 are met].

### 2.2 Total Income and gains

The aggregate of the income and gains to be exempted must be in excess of 50% of the aggregate of the individual's total income and gains for the year concerned. Social Welfare benefits and pensions paid in respect of the same injury or disability that gave rise to the payment of the Hepatitis C or HIV compensation will not be taken into account when calculating whether the aggregate of the income and gains are in excess of 50% of the aggregate of the individual's total income and gains. In the case of a married couple assessed to tax under the provisions of section 1017 of the Taxes Consolidation Act 1997 or a couple who are registered civil partners and are assessed to tax under the provisions of section 1031C of the Taxes Consolidation Act 1997, (aggregation basis) the "50%" test is applied only to the income and gains of the incapacitated individual, and not to the aggregated income and gains of the relevant individuals when determining if the exemption is due.

## 2.3 Return of Income and Capital Gains Tax Return

Income exempt under the provisions of *Section 189 Taxes Consolidation Act 1997* is not taken into account in computing total income for tax purposes. However, this does not relieve the individual of the obligation to include this income when making returns of total income. Gains exempt under the provisions of *Section 189 Taxes Consolidation Act 1997* are not taken into account in computing total gains for capital gains tax purposes. However, this does not relieve the individual of the obligation to make returns under the Capital Gains Tax Acts.

### 3.1 Position prior to 1 January 2004

*Prior to 1 January 2004* compensation payments made by the Hepatitis C and HIV Compensation Tribunal or similar payments awarded following the institution of civil action for damages in respect of personal injury were exempt from income tax under the provisions of section 191 of the Taxes Consolidation Act 1997.

Capital gains were not exempt prior to 1 January 2004.

### 3.2 Exemption – pre 2004

These payments are treated for income tax purposes in all respects as if they arose out of a civil action for damages for personal injury. The provisions of Section 189 Taxes Consolidation Act 1997 dealing with personal injury awards apply. Any investment income (Case 111, Case IV, Case V, Schedule C or Schedule F) arising from the compensation payment is exempt from income tax if the individual is **permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself**. The investment income must be the sole or main income of the individual concerned.

[Where it is medically certified that an individual who is suffering from a degenerative condition which will ultimately cause a permanent and total incapacity by reason of mental or physical infirmity and the condition gave rise to the compensation payment, Revenue accepts that the requirements of subsection 1(a), section 189 Taxes Consolidation Act 1997 are met.]

### 3.3 Sole or Main Income

Sole or main income means more than 50%. Social Welfare benefits and pensions paid in respect of the same injury or disability that gave rise to the payment of the Hepatitis C compensation will not be taken into account when

calculating whether the investment income is the sole or main income of the individual. In the case of a married couple assessed to tax under the provisions of section 1017 of the Taxes Consolidation Act 1997 (aggregation basis) or a couple who are registered civil partners and are assessed to tax under the provisions of section 1031C of the Taxes Consolidation Act 1997, the “sole or main” test is applied only to the income of the incapacitated spouse or incapacitated civil partner in determining if the exemption is due.

#### **3.4 Return of Income**

Income exempt under the provisions of *Section 189 Taxes Consolidation Act 1997* is not taken into account in computing total income for tax purposes. However, this does not relieve the individual of the obligation to include this income when making returns of total income.