



Taxation of beneficiaries of the Thalidomide Trust

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A number of Members have contacted by constituents in connection with a campaign to exempt payments made to beneficiaries of the Thalidomide Trust from income tax.¹ This note looks first at the establishment of the Trust and the way that payments made to its beneficiaries have been taxed in the past, before discussing this campaign and the Government's response to it.

Contents

A.	The Thalidomide Trust	1
B.	The campaign for tax relief	3
C.	The issue of 'structured settlements'	7
D.	Recent developments	10

A. The Thalidomide Trust

The aim of the Thalidomide Trust is to provide relief and assistance for those people born in the UK damaged as a result of their mothers having taken the drug thalidomide (as manufactured by Distillers Biochemicals Limited) during their pregnancy. At present the Trust is supporting 455 individuals, each in the main between 38 and 41 years of age.²

The Trust was established in 1973 to administer ongoing compensation offered initially by the company which manufactured this drug, though it has received subsequent donations by Guinness and later Diageo plc (the companies who had successively acquired the Distillers group). The Trust was set up as a charity, and at the time it was believed – mistakenly, as it turned out – that in doing so, any distributions made to beneficiaries would be tax-exempt. At the time there was considerable public concern that, given the Government did not wish to amend the tax treatment of trusts, or make a specific exception for this particular trust, the size of the initial endowment by Distillers would be too small. As a history of the Thalidomide case explains, “the problem was eventually resolved by the Government authorising the payment of £5 million to the trust, so as to offset the effects of taxation

¹ An Early Day Motion supporting this campaign (“Thalidomide Trust” EDM 284 of 2002-03, 4 December 2002) attracted 103 signatures.

² The Trust's contact details are: The Thalidomide Trust, 1 Eaton Court, Colmworth Business Park, Eaton Socon, St Neots, Cambridgeshire PE19 8YH Tel: 01480 - 474074 <http://www.thalidomide.org.uk/>

without having to change the law. Also the Inland Revenue was prepared to exempt from tax funds used in buying or making alterations to houses.”³

It is important to underline that the trust was not established by the court following a successful legal claim of negligence against the Distillers group. In 1968 the company had agreed to make a limited payment with a relatively small number of affected families, and a public campaign criticising the size and scope of this compensation resulted in the company’s offer to set up the trust, which would make payments to a much larger group of children. Part of the settlement between the beneficiaries of the trust and the company was that the families would withdraw allegations of negligence against Distillers.⁴

In 1978 Distillers made a second grant worth £3 million to the Trust, to take account of a second group of children – some of those on the so-called ‘Y list’ – whose right to compensation was found to be the same as those first covered by the Trust’s endowment – children on the ‘X list’, as it was known.⁵ Similar concerns were raised over the fact that the value of this payment would be significantly reduced due to the Trust’s tax treatment: as a consequence the Government announced it would “contribute £800,000 to the fund to offset tax liabilities on payments to new beneficiaries ... [following] the precedent set in 1974, when this Government provided £5 million to offset the effects of taxation.”⁶

In both cases, the amounts paid into the Trust by Distillers were not calculated specifically on the basis of the future lifetime needs of the children; rather they were the result of protracted bargaining. Over the years the continuing medical needs of the Trust’s beneficiaries, along with variations in its financial performance, have raised questions about the Trust’s future viability. In 1995 the Guinness Group, which had taken over Distillers, made another grant of £37.5 million, and the next year the then Conservative Government made a payment of £7 million, to supplement this grant; an extract from a press notice issued at the time is reproduced below:

The Government is to make an additional payment to the Thalidomide Trust, originally set up in 1973 to help victims of the thalidomide tragedy. The Trust is to receive a final payment of £7 million to supplement the additional £37.5 million promised to the Trust last year by the Guinness Group, the successors to the Distillers Company who marketed thalidomide in the UK. Stephen Dorrell, Secretary of State for Health, said: “The payment we have made recognises the unique and tragic circumstances which surround the thalidomide disaster. Many of the victims are now coping with the responsibilities and difficulties of adulthood, family life and employment. These are factors which could not have been foreseen at the time of the

³ Harvey Teff & Colin Munro, *Thalidomide: the legal aftermath*, 1976 p 24. The original settlement with Distillers in 1973 amounted to £18,974,142 (Department of Health press notice 96/192, 5 June 1996).

⁴ *Thalidomide: the legal aftermath*, 1976 p 22

⁵ This report had been commissioned by the Government, and published in August 1978 (*Thalidomide Y list inquiry: report by Sir Alan Marre KCB*, 1978). Those children on the “X-list” had been accepted by Distillers as thalidomide cases when the Trust was established; children on the “Y-list” were disputed cases; the Marre report recommended 20 of them should be given the same compensation as those on the X-list.

⁶ HC Deb 3 August 1978 cc 666-7W

original Distillers' settlement. We hope that the once and for all payment we will be making to the Trust will help make life that little bit easier for those affected.”⁷

The history of these payments was summarised in a written answer given in November 2002:

Pete Wishart: To ask the Chancellor of the Exchequer, how much money the Government have paid into the Thalidomide Trust since 1973; how much tax the Government have collected from payments from the Thalidomide Trust to thalidomide victims; what tax rate is applied to payments to thalidomide victims from the Thalidomide Trust; and if he will estimate the uptake of tax reclaim under the previous fiscal system by thalidomide victims who pay tax on money from the Thalidomide Trust.

Dawn Primarolo: The Government paid £5m into the Thalidomide trust in 1974, £800,000 in 1978, and £7m in 1996. Taxpayer confidentiality prevents the disclosure of specific details on how much tax the Government has collected from payments from the Thalidomide trust to thalidomide victims. As with other discretionary trusts, the trustees account for tax at 34 per cent. on the income they pay out. The beneficiaries are then subject to tax on this income in the normal way, and they may claim credit for the tax paid by the trustees. This tax treatment has not changed so it is not possible to estimate the uptake of tax reclaim under a previous fiscal system. Information on the numbers of thalidomide victims claiming tax repayment is not available.⁸

B. The campaign for tax relief

In 2000 Diageo plc announced it would make covenanted payments up to 2002 worth £32.5 million in total; according to the Trust, following this announcement “a new investment strategy was implemented, and the combined result was that by 2001, the level of reserves exceeded £100 million, and the Trust’s actuaries were able to advise the Trustees that there was now sufficient money to maintain the established level of support for beneficiaries for the rest of their lives.”⁹ There have been calls that the Government should also make a grant,¹⁰ and the issue was raised by Jonathan Djanogly in an adjournment debate on 9 December 2002.¹¹ An extract from the Member’s speech is given below:

⁷ Department of Health press notice 96/192, 5 June 1996. Prior to this, an EDM calling on the Government “to take such steps as will be necessary in order that the full benefit of the recent Guinness plc donation also goes to the thalidomide victims” attracted 43 signatures (EDM 1390 of 1994-95, 11 July 1995).

⁸ HC Deb 6 November 2002 c 278W

⁹ <http://www.thalidomide.org.uk/trust/history.asp>. That said some beneficiaries have argued this payment was insufficient: “Thalidomide victims in new cash fight as compensation runs out”, *Sunday Times*, 29 September 2002.

¹⁰ An EDM calling on the Government to “offset the taxation payable upon distributions from the Trust to the victims of thalidomide” attracted 125 signatures (“Taxation of beneficiaries of the Thalidomide Trust” EDM 107 of 2002-03, 14 November 2002). A second EDM (“Thalidomide Trust” EDM 284 of 2002-03, 4 December 2002) proposing “the removal of tax on income payments received by beneficiaries of the Thalidomide Trust” was mentioned above.

¹¹ HC Deb 9 December 2002 cc 129-136

The trust was set up as a charity because it was believed that its objects, being charitable, would result in all distributions made to beneficiaries being tax exempt, but that proved not to be the case. However, the then Government agreed that there had been a genuine misunderstanding about the tax treatment of the payments made to beneficiaries by the trust. On that basis, in 1974, the Government paid a sum of £5 million to the trust to offset the tax payable on distributions. Further payments totalling £12.8 million were made to the trust in 1975, 1979 and 1996 by Distillers and its successor company, Guinness.

It is important to note that each time a request was made by the trust to the Government, such a request was made on the basis of offsetting the effect of tax on the distributions of the trust, and the same formula for calculating the offset was used in each case. Another important point is that previous Governments' payments to the trust do not set any sort of precedent for other charities, which might give the Government reason not to wish to give the traditional relief to the Thalidomide Trust again. That is because a class action compensation settlement being made today would normally be established as a structured settlement, with payments in all normal circumstances being tax exempt.

Even taking previous Governments' tax payments into account, it could not be said that the trust has not paid any tax—indeed, although Governments have paid £12.8 million to the trust since 1974, they have received taxes of more than £15.5 million from the trust, and are likely to take another £20 million in tax receipts between 2002 and 2022, thus providing a Treasury profit over the years of about £23 million. In practice, about £12 million of that tax has been recovered by beneficiaries claiming tax allowances, but that still leaves the Government approximately £11 million in profit.

The tax position of thalidomide beneficiaries is that victims without other sources of income are able to reclaim the difference between the tax that the trust deducts from distributions to them and their personal allowance of the basic rate of tax. That means that beneficiaries can achieve tax reclaims typically a year after they have received the payments, although, unfortunately, it is believed by the trust that many of the beneficiaries do not take advantage of that, either because of their lack of understanding of the system, or because of the need to employ accountants to prepare their tax returns for them.

To return to the current position, if the formula that was applied to previous extensions to the original Distillers covenant were to be used, the Government should now be paying the trust £6.1 million ... Unfortunately, however, on 30 July this year the Chancellor turned down the trust's request to be treated in the way that every past Government had allowed. As a result, no Treasury payment is now being offered in respect of the recent Diageo covenant. The decision has now been confirmed in a letter that I received from the Chancellor this morning ...

I urge the Government to think again on this matter. Please look at how the victims are still struggling by reason of no fault of their own, look at what every Government since 1974 have done for the victims, look at the tax income that the UK has received from the victims, despite Government payments to the trust, look at the fact that the British Government have never directly given a penny towards the welfare of these

victims, look at the fact that every other country not only does not tax its own victims, but gives them taxpayers' money, and then please look again at the Chancellor's mean-spirited and factually incorrect response to this sensible and fair request.¹²

There has not been an official estimate of how much this measure might cost:

Nick Harvey: To ask the Chancellor of the Exchequer if he will estimate the annual cost to the Treasury of allowing income payments from the Thalidomide Trust to thalidomide victims to be tax exempt; and if he will make a statement.

Dawn Primarolo: The information requested is not available.¹³

In her response to this adjournment debate the Paymaster General, Dawn Primarolo, acknowledged the important work of the Trust, but confirmed that the Government were not minded to change their position on the issue. In his speech Mr Djanogly had suggested that each of the three government payments made to the Trust had been calculated by reference to the same formula; in her speech the Minister stated this had not been the case in 1996:

In 1974, the then Labour Government contributed some £5 million in recognition that, in terms of the original settlement, confusion over the tax position may have changed the decision on how much money was paid into the trust. They made a subsequent contribution in 1978, in recognition of the new beneficiaries within the trust's remit, and in fairness to the original payment. That payment was in respect of the setting up of the trust, and of the actual amount that would have been settled. From 1974, the tax position was clear, and I shall explain to the House what it is now.

In 1996, the then Conservative Government made a further payment, but the hon. Gentleman is not correct in saying that it was made on the same basis as that made in 1974. In fact, it was less than it might have been, had it been made on the same basis as the 1974 payment ... The then Chief Secretary to the Treasury set out in a letter the basis on which the £7 million payment was to be made to the trust. The letter states very clearly that the payment was not being made for the offset of tax treatment; however, it went further. It said that any payment would "not represent any offset for tax, and that future support for the Trust will be a matter solely between the Trustees and Guinness", now Diageo.

The letter continues: "I would be very concerned if the Trustees and Guinness assumed that the taxpayer would automatically pay a proportion of the cost" for the trust. Indeed, as the hon. Member for Huntingdon pointed out, following discussions between the then Chief Secretary and the then Secretary of State for Health, the right hon. Member for Charnwood (Mr. Dorrell), the press release from the Department of Health said that a once and for all payment would be made to the trust.¹⁴

¹² HC Deb 9 December 2002 cc 129-132

¹³ HC Deb 18 November 2003 c 728W

¹⁴ HC Deb 9 December 2002 c 133

Ms Primarolo went on to set out how the Trust was taxed, concerned that this had been misrepresented:

As the trust is a charity, it claims a repayment of the tax paid on its investment income. Some payments made by the trust are taxed. The fact is well recognised. However, there is sometimes a misunderstanding—I put it generously—about the exact process. How the trust distributes its finances on income support and capital grants means that there is a difference in the tax treatment. Capital grants are not subject to taxation, and that accounts for 57 per cent. of the total distributions. Income distributions are, under certain circumstances, which accounts for 43 per cent. of the distributions.

We can give an example of what would happen on income distributions. Non-taxpayers can reclaim the full amount of tax as a tax credit. Starting rate taxpayers—the 10 per cent. taxpayers—can reclaim £24 of the £34. Basic rate taxpayers can reclaim a proportion—£12—of that money, and higher rate taxpayers cannot. The central argument advanced by the Thalidomide Trust is that although its members, some 450, may well be entitled to the tax credit, they are not claiming it. This is about the money that the individuals get. The Government have said quite clearly that they are prepared to work with the trust to ensure that those who are entitled to the tax credit get it back. That is precisely what is in the fact sheet produced by the Thalidomide Trust.

This is an important debate about how we take forward the principles of taxation and support for the victims of thalidomide and how we treat others who, in tragic circumstances, find themselves in the same position. The circumstances are not unique.¹⁵

Subsequently the Government reiterated that the Revenue would try to ensure that those beneficiaries entitled to a credit on their income from the Trust are claiming it:

Lord Morris of Manchester asked Her Majesty's Government: Whether they will be taking action to assist beneficiaries of the Thalidomide Trust in claiming back their tax credit entitlements.

Lord McIntosh of Haringey: The Inland Revenue will provide all the help they can to ensure that the beneficiaries of the Thalidomide Trust receive all the tax repayments due to them. The Paymaster General has asked the Inland Revenue to contact the Thalidomide Trust to discuss how best to assist them.¹⁶

In a subsequent written answer the Paymaster General, Ms Primarolo, confirmed that she had “met representatives of the Thalidomide Trust on 18 December 2002” to discuss funding issues with them, and that “subsequently, Inland Revenue officials visited the Trust to offer

¹⁵ HC Deb 9 December 2002 c134

¹⁶ HL Deb 16 December 2002 c 64WA.

direct advice and assistance on a number of issues, including tax repayment and access to tax credits.”¹⁷ A PQ in March 2004 gave some details of these discussions:

Mr. Hoyle: To ask the Chancellor of the Exchequer if he will make a statement on recent discussions with the trustees of the Thalidomide Trust.

Dawn Primarolo: I can confirm that discussions between the Thalidomide Trust and officials of the Inland Revenue are currently taking place on a number of issues to ensure the Trust pays the correct amount of tax and the beneficiaries claim all the tax repayments and Tax Credits to which they are entitled. However the tax affairs of the Thalidomide Trust are confidential and a matter for the Trust and the Inland Revenue. If the Trust wish to make a statement about those discussions then that is a matter for the trustees.¹⁸

C. The issue of ‘structured settlements’

One argument that has been made by individuals supporting this campaign is that if the Thalidomide Trust were to be set up now, payments to its beneficiaries would not be subject to income tax under the system of ‘structured settlements’. This is a legal instrument for parties to agree voluntarily on a payment of damages, the tax treatment of which was formalised in the late 1980s. The issue was mentioned by Jonathan Djanogly in his adjournment debate in December 2002:

Previous Governments' payments to the trust do not set any sort of precedent for other charities, which might give the Government reason not to wish to give the traditional relief to the Thalidomide Trust again. That is because a class action compensation settlement being made today would normally be established as a structured settlement, with payments in all normal circumstances being tax exempt.¹⁹

It is infeasible, in the context of this short note, to discuss in any depth the legal arrangements for payments of damages. However, as mentioned above, the use of structured settlements developed in the late 1980s, following a ruling by the Inland Revenue on how this type of payment should be treated for tax purposes. The background to this issue was examined in a paper by the Law Commission published in 1994, and an extract is reproduced below:

STRUCTURED SETTLEMENTS: Summary of the present law

3.1 The structured settlement provides an alternative form of damages to the lump sum award. Structured settlements have developed in the United Kingdom without legislative assistance as a result of their tax status. They usually consist of an initial lump sum part payment followed by a series of further instalments of the damages for which the defendant is liable. The initial lump sum tends to represent compensation

¹⁷ HC Deb 6 October 2003 c 1104W

¹⁸ HC Deb 2 March 2004 c 804W

¹⁹ HC Deb 9 December 2002 cc 129-130. The Minister did not respond to this point in Mr Djanogly’s speech.

for past pain and suffering and costs and expenses already incurred. The defendant or the defendant's insurer²⁰ uses the balance of the sum due under the settlement to purchase an annuity or a series of annuities from a life insurance company. The payments made under the annuities are used to fund the periodic payments, which usually last for the life of the plaintiff or a specified term, whichever is the longer.²¹ At present, in the United Kingdom, structures are agreed voluntarily between the parties.

3.2 The genesis for the development of structuring in this country was a decision by the Inland Revenue embodied in an agreement between the Inland Revenue and the Association of British Insurers (ABI) in mid-1987. Although lump sum payments are themselves capital and are not subject to tax, any interest earned from subsequent investment is.²² Periodic payments were also regarded as taxable in the hands of the plaintiff. For this reason, there was no perceived tax advantage in structuring an award rather than investing a lump sum. However, in 1978-79 in the United States, and in 1980 in Canada, the revenue authorities conceded tax-free status to structured settlements. This process considerably boosted the use of such settlements in North America and was mirrored in the United Kingdom by the 1987 agreement between the Inland Revenue and the ABI.

3.3 The Revenue considered that under existing case law damages do not necessarily lose their quality as capital falling outside the charge to income tax if the liability is discharged by a series of payments to the plaintiff. The previously obscure 1936 decision in *Dott v Brown*²³ supported this conclusion even where the series of payments was to continue for the life of the payee. Provided that the agreement between the defendant or the defendant insurer and the plaintiff was drafted in appropriate terms, the series of payments to which the plaintiff became entitled under an agreement for a structured settlement was not chargeable to income tax.

3.4 The Inland Revenue approved a model agreement, drafted by the ABI, which may incorporate any of four different types of periodic payment schedules. Basic Terms allow pre-set payments to run for a fixed period. Indexed Terms link the payments in a Basic Terms agreement to the RPI to make them inflation-proof. Terms for Life allow pre-set payments to continue until the plaintiff's death, and there may be a pre-set minimum number of payments. Indexed Terms for Life are inflation-proof terms for life. The Inland Revenue has given such agreements advance clearance in principle provided they are in the standard form. The four types of arrangements reflected in the schedules are not necessarily the only ones acceptable to the Revenue but any variations require individual clearance. We were advised by the Revenue

²⁰ Hereafter "the defendant insurer".

²¹ The analogy has been made with pensions (see Richard Lewis, *Structured Settlements: The Law and Practice* (1993), ch 1), but it is not entirely appropriate and does not reflect the technical differences between structures and pensions, which are charged to tax under Schedule E of the Income and Corporation Taxes Act 1988, s 19(3).

²² See para 2.42 above.

²³ [1936] 1 All ER 543 (CA). Also relevant are *IRC v Ramsay* [1935] All ER (Reprint) 847, and *IRC v Church Commissioners for England and Wales* [1975] 1 WLR 1383 and [1977] AC 329 (HL).

during consultation that as legal and financial practitioners have become more experienced with structured settlements, the number of agreements on which it is asked to comment has decreased.

3.5 In theory, the scope of structured settlements could be very wide. The Revenue interpretation of the case law and the model agreements could be used to structure settlements other than those arising from personal injury claims. However, the Revenue reached agreement with the ABI based on a hypothetical personal injury case and is said to be “keen that the tax position be limited to cases involving debts arising as a result of personal injury actions; it does not wish to see structures extended to other forms of litigation or to debts arising in other circumstances”.²⁴ We are not aware of any attempts to extend the use of the scheme beyond personal injury claims ...²⁵

The Commission recommended a number of measures to facilitate the use of structured settlements to meet personal injury claims – including the exemption from tax of annuities purchased as damages for the victim of a personal injury by the person responsible for the injury or by that person’s insurer.²⁶ The Government introduced legislation in the *Finance Act 1995* (section 142) to this effect, widening the scope of the exemption the following year (under section 150 of the *Finance Act 1996*).²⁷ (The provisions are consolidated in ss 329AA-AB of the *Income and Corporation Taxes Act (ICTA) 1988*.)

When the latter provision was debated in Standing Committee in March 1996 the then Financial Secretary to the Treasury, Michael Jack, set out the scope of this exemption as follows:

Last year’s measures allowed the series of non-taxable damage payments to which the victim was entitled under structured settlement agreements to be replaced by an annuity. To maintain uniformity to treatment, the annuity is exempted from tax.

The proposed measures extend the exemption to a range of situations that are met with in real life but which fall outside the terms of the legislation. They remove the requirement that the annuity should be purchased only by the person who is responsible for the damages of his insurer. They enable the damages to be payable in the form of an annuity to trustees who act for the victim, and they also extend an exemption to some settlements that are reached outside the United Kingdom and which, because of local practice, cannot be drawn up in a form that would produce non-taxable damages ...

²⁴ See Richard Lewis, *Structural Settlements: The Law and Practice* (1993) p 65.

²⁵ Law Commission, *Structured settlements and interim and provisional damages*, Cm 2646 September 1994 pp 26-7. The main recommendations were implemented under the *Damages Act 1996*. It should be noted there have been further developments in this area of the law since the Commission’s report, in relation to the way civil courts may award damages in personal injury cases (for further details see, *The Courts Bill*, Library Research paper 03/52, 5 June 2003 pp 90-99).

²⁶ Cm 2646 September 1994 pp 67-70

²⁷ Inland Revenue press notice 31/96, *Damages for personal injury: tax exemption*, 29 February 1996

The Criminal Injuries Compensation Act 1995 created a new class of structured settlements for claims to the Criminal Injuries Compensation Board – they fell outside the existing exemption, because awards by the board are not damages as such but represent compensation. The 1995 Act introduced a tax exemption specific to the structured settlements of compensation and that is carried across to the new provisions.²⁸

One minor aspect of these provisions has proved important in relation to the Thalidomide Trust (this is discussed in more detail below). The Treasury is granted an order-making power to apply this exemption for personal injury damages “with such modifications as the Treasury consider necessary” if it appears that the statutory definition of this type of payment would cover “any other scheme or arrangement, whether established by statute or otherwise, [which] makes provision for the making of periodical payments by way of compensation for personal injury” (under section 329AB(3) of *ICTA 1988*).

It is important to underline the fact that since the Thalidomide Trust was established, the tax treatment of trusts has *not* been altered to mirror the tax advantages offered by this quite separate legal entity. The issue of structured settlements was raised briefly in a recent written answer in the Lords, reproduced below:

Baroness Finlay of Llandaff asked Her Majesty's Government: Why the compensation to some thalidomide victims is not tax exempt; and whether this is in line with other personal injury payments.

Lord Davies of Oldham: Payments to thalidomide victims are made from the Thalidomide Trust, which was set up in 1973 under the agreement with Distillers (the manufacturers of the drug). Income payments from this trust are taxable on the beneficiaries under the normal trust income tax rules. Payments following a settlement of a claim or action for damages for personal injury can be made in a number of ways, some where the payments are taxable in the hands of the recipient and some where they are not. For instance, it is possible for regular payments made under a structured settlement to be exempt from tax under legislation introduced in 1996, provided the settlement meets the conditions of that legislation.²⁹

D. Recent developments

During Prime Minister's Questions on 16 June 2004 John Bercow asked if the Prime Minister would support “a decision to make all payments from the Thalidomide Trust tax-free.” In response Mr Blair said, “I am not sure of the position in relation to tax-free pay-out, but I will certainly look into it. If there is something we can do, I am sure that we will, but obviously that must be balanced with other considerations.”³⁰ On 15 July the Paymaster General gave a

²⁸ SC Deb (E) 7 March 1996 cc 736-8

²⁹ HL Deb 23 February 2004 c 9WA

³⁰ HC Deb 16 June 2004 cc 771-2

written statement that the Government would legislate to ensure payments made by the trust would, in future, be exempt from income tax:

Tax Treatment of Payments by Thalidomide Trust

The Paymaster General (Dawn Primarolo): The Treasury is today laying a statutory instrument which provides that payments by the Thalidomide Trust to the people affected by the drug thalidomide will in future be exempt from income tax. This legislative change, on which the Government have consulted with the trust, will come into effect on 5 August 2004.³¹

In effect the Trust has undertaken to amend the way that it makes payments to its beneficiaries so that a payments may be treated, for tax purposes, as a structured settlement for the payment of damages. Further details were given in a press notice from which the following is taken:

Since 1974, the Thalidomide Trust has been subject to the same rules that govern payments from all 'discretionary trusts'. Up until now some payments from the Trust have counted towards the victims' 'taxable income', increasing their tax bills and also reducing their level of entitlement to tax credits.

Following consultation with the Inland Revenue the Trust will change the way it makes its payments to victims so that they can be classified as "periodical" and fall within the scope of legislation governing "structured settlements". This allows the Treasury to make use of a hitherto-unused provision of the *Income and Corporation Taxes Act 1988* to designate the "periodical payments" to Thalidomide victims as exempt from income tax.

The new legislation will take effect from 5th August 2004, after which payments from the Trust to victims will be discounted as "income" for the purposes of calculating the victims' income tax liabilities and their entitlement to tax credits.

The total value of the change to Thalidomide victims in terms of lower income tax and additional tax credits will be around £1 million per year. For individual victims, it could be worth up to £60 a week, £240 a month, or £3,120 per year.³²

To this end the *Thalidomide Children's Trust (Application of Section 329AA of the Income and Corporation Taxes Act 1988) Order SI 2004/1819* was laid before the House. It came into effect on 5 August 2004.

³¹ HC Deb 15 July 2004 c 76WS. Ms Primarolo also mentioned this decision during Treasury Questions that same day (HC Deb c 1525).

³² HM Treasury press notice 66/04, 15 July 2004