
STATUTORY INSTRUMENTS

1996 No. 2643

INCOME TAX

The Income Tax (Manufactured Overseas Dividends) (Amendment No. 2) Regulations 1996

<i>Made</i>	- - - -	<i>16th October 1996</i>
<i>Laid before the House of Commons</i>	- - - -	<i>16th October 1996</i>
<i>Coming into force</i>	- -	<i>6th November 1996</i>

The Treasury, in exercise of the powers conferred on them by paragraphs 1(1), 4(3B) and (6) to (8), and 8 of Schedule 23A to the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Manufactured Overseas Dividends) (Amendment No. 2) Regulations 1996 and shall come into force on 6th November 1996.

Interpretation

2. In these Regulations “the principal Regulations” means the Income Tax (Manufactured Overseas Dividends) Regulations 1993(2) and “regulation” means a regulation of the principal Regulations.

Amendments to the principal Regulations

3.—(1) Regulation 2 shall be renumbered as paragraph (1) of that regulation.

(2) In regulation 2(1)—

(a) in the definition of “approved United Kingdom collecting agent”(3) the words “for the purposes of Chapter VIIA of Part IV of the Taxes Act” shall be omitted;

(1) 1988 c. 1. Schedule 23A was inserted by paragraph 1 of Schedule 13 to the Finance Act 1991 (c. 31) and amended by sections 123(2) to (5) and 124 of, and Part V (14) of Schedule 26 to, the Finance Act 1994 (c. 9), by section 82(3) of the Finance Act 1995 (c. 4), and by section 159(4) to (8) of, and paragraph 28(2) of Schedule 7, paragraph 52(4) and (5) of Schedule 14, paragraph 7 of Schedule 29, and Part V (21) of Schedule 41, to the Finance Act 1996 (c. 8).

(2) S.I. 1993/2004, amended by S.I. 1995/1324 and 1996/1229.

(3) Amended by S.I. 1996/1229.

- (b) after the definition of “chargeable period”(4) there shall be inserted the following definition—

““collecting agent” has the meaning given by section 118C(1) of the Taxes Act for the purposes of Chapter VIIA of Part IV of that Act(5);”

- (3) After regulation 2(1) there shall be added the following paragraph—

“(2) References in regulations 3 to 11, 14 and 15 to manufactured overseas dividends do not include references to manufactured overseas dividends to which regulation 2B applies, and references in those regulations to overseas dividends do not include references to any overseas dividend of which a manufactured overseas dividend to which regulation 2B applies would be representative.”

4. After regulation 2A(6) there shall be inserted the following regulation—

“Tax treatment of manufactured overseas dividends paid in connection with loan relationships

2B.—(1) For the purposes of the provisions of the Tax Acts relating to the charge to tax under Schedule D, paragraph 4(2) and (3), and paragraph 5, of Schedule 23A shall not apply to a manufactured overseas dividend paid in the circumstances prescribed in paragraph (2).

(2) The circumstances prescribed are where the manufactured overseas dividend is representative of an overseas dividend on an overseas security that represents a loan relationship.

(3) Where the payer of a manufactured overseas dividend to which paragraph (2) applies is neither a company nor carrying on a trade in circumstances where the manufactured overseas dividend is taken into account in computing the profits of that trade, the manufactured overseas dividend shall be treated, for the purposes of the provisions of the Tax Acts relating to the charge to tax under Schedule D and so far as the payer is concerned, as if the amount paid was an annual payment, within section 349(1) of the Taxes Act(7), but so that no amount is required to be deducted on account of income tax from the amount of the payment, or accounted for under section 350 of that Act(8).

(4) Where the recipient of a manufactured overseas dividend to which paragraph (2) applies is neither a company nor carrying on a trade in circumstances where the manufactured overseas dividend is taken into account in computing the profits of that trade, the manufactured overseas dividend shall be treated, for the purposes of the provisions of the Tax Acts relating to the charge to tax under Schedule D and so far as the recipient is concerned, as an overseas dividend of an amount equal to the amount of the manufactured overseas dividend received by him, but not so as to entitle the recipient to claim relief under Part XVIII of the Taxes Act in respect of any tax attributable to the manufactured overseas dividend received.

(5) For the purposes of paragraph (2), an overseas security shall be taken to represent a loan relationship if a company holding that security would have a loan relationship within the meaning of section 81 of the Finance Act 1996.

(4) Substituted by S.I. 1995/1324.

(5) Chapter VIIA of Part IV of the Taxes Act (comprising sections 118A to 118K) was inserted by Part I of Schedule 29 to the Finance Act 1996.

(6) Inserted by S.I. 1995/1324.

(7) Section 349(1) was amended by Part VIII(22) of Schedule 29 to the Finance Act 1995 and paragraph 5(1) of Schedule 29 to the Finance Act 1996.

(8) Section 350 was amended by paragraph 8 of Schedule 6 to the Finance Act 1996.

(6) References in paragraph (4) to the recipient of a manufactured overseas dividend include references to any person claiming title to the manufactured overseas dividend through or under the recipient.”

5. In regulation 4(4)(9) after sub-paragraph (a) there shall be inserted the following sub-paragraph—

“(aa) the approved United Kingdom intermediary is required to pay a manufactured overseas dividend representative of the same overseas dividend as is represented by the manufactured overseas dividend received by him, in circumstances where regulation 3(4) applies to the payment, or.”

6. In regulation 5(2)(b)(ii)—

- (a) after the word “has” there shall be inserted the word “either”;
- (b) after the word “tax” there shall be added the words “or makes the payment in circumstances where regulation 3(4) applies”.

7. After regulation 6 there shall be inserted the following regulation—

“Reduction of tax payable under paragraph 4(3) of Schedule 23A

6A.—(1) Where, in a case to which paragraph 4(3) of Schedule 23A applies, overseas tax was charged on, or in respect of, the making of the manufactured overseas dividend received by the United Kingdom recipient, the amount of tax to be accounted for and paid under that provision shall, for the purposes of the provisions of the Tax Acts relating to the charge to tax under Schedule D, be taken as reduced in accordance with paragraph (2) or, as the case may be, paragraph (3).

(2) Where the amount specified in paragraph (4) exceeds the amount specified in paragraph (5), the amount of tax shall be reduced so as to equal the amount of the excess.

(3) Where the amount specified in paragraph (4) is equal to or less than the amount specified in paragraph (5), the amount of tax shall be reduced to nil.

(4) The amount specified in this paragraph is the amount of the manufactured overseas dividend received by the United Kingdom recipient.

(5) The amount specified in this paragraph is the amount which the United Kingdom recipient would have received by way of the overseas dividend of which the manufactured overseas dividend is representative, had the overseas dividend been paid to him.

(6) Relief claimed by the United Kingdom recipient under Part XVIII of the Taxes Act in a case to which paragraph (2) applies, other than relief given by virtue of section 811 of that Act(10), shall not exceed the aggregate of the amount of tax accounted for and paid by the United Kingdom recipient under paragraph 4(3) of Schedule 23A and the amount of overseas tax charged on, or in respect of, the making of the manufactured overseas dividend received by him.”

8. In regulation 7(11)—

- (a) In paragraph (2) after sub-paragraph (d) there shall be added the following sub-paragraph—

“or

(9) Amended by S.I. 1996/1229.

(10) Section 811 was amended by section 103(2)(g) of, and Part III (9) of Schedule 23 to, the Finance Act 1993 (c. 34), and by paragraph 47 of Schedule 14 to the Finance Act 1996.

(11) Amended by S.I. 1996/1229.

(e) is an approved United Kingdom collecting agent or an approved United Kingdom intermediary in receipt of a manufactured overseas dividend who shows that the overseas dividend manufacturer concerned was entitled to payment of the overseas dividend of which the manufactured overseas dividend is representative either—

(i) as the holder of the overseas securities concerned, or

(ii) directly or indirectly from a person from whom he acquired those securities, or to whom he transferred them, and who was so entitled as the holder of those securities.”

(b) after paragraph (3) there shall be inserted the following paragraph—

“(3A) Where by virtue of paragraph (1) tax is not required to be accounted for and paid pursuant to paragraph 4(3) of Schedule 23A in the circumstances prescribed by paragraph (2)(e), paragraph 4(4) of that Schedule shall apply as if the amount of tax required under paragraph 4(3) of that Schedule had been accounted for and paid.”

9. After regulation 7 there shall be inserted the following regulation—

“Disapplication of paragraph 5 of Schedule 23A

7A. For the purposes of the provisions of the Tax Acts relating to the charge to tax under Schedule D, paragraph 5 of Schedule 23A shall not apply where the manufactured payment referred to in sub-paragraph (1) of that paragraph is a manufactured overseas dividend, and accordingly paragraph 4 of that Schedule shall apply in relation to any such manufactured payment.”

10. In regulation 9—

(a) for paragraph (1) there shall be substituted the following paragraphs—

“(1) In the circumstances prescribed by paragraph (2) and subject to paragraph (4), a person who is an overseas dividend manufacturer in any chargeable period shall be entitled to set off the amounts specified in paragraph (1A) against the sums specified in paragraph (1B).

(1A) The amounts specified in this paragraph are—

- (a) amounts of overseas tax in respect of overseas dividends received by the overseas dividend manufacturer in the chargeable period;
- (b) amounts of overseas tax charged on, or in respect of, the making of manufactured overseas dividends so received by him;
- (c) amounts deducted under paragraph 4(2) of Schedule 23A from manufactured overseas dividends so received by him;
- (d) amounts accounted for and paid under paragraph 4(3) of Schedule 23A in respect of manufactured overseas dividends so received by him;
- (e) amounts accounted for and paid under regulation 4(3) in respect of manufactured overseas dividends so received by him.

(1B) The sums specified in this paragraph are sums due from the overseas dividend manufacturer on account of the amounts deducted by him under paragraph 4(2) of Schedule 23A from the manufactured overseas dividends paid by him in the chargeable period.”

(b) in paragraph (2)—

- (i) sub-paragraph (aa)(12) shall be omitted;
- (ii) in sub-paragraph (b) for the words “paragraph (1)(a)” there shall be substituted the words “paragraph (1A)”;
- (c) in paragraph (3)—
 - (i) after the words “so received” there shall be inserted the words “on or in respect of the making of which overseas tax has been charged or”;
 - (ii) for the words “paragraph (1)(a)” there shall be substituted the words “paragraph (1A)”;
- (d) in paragraph (4) in sub-paragraphs (a) and (b) after the words “the tax” there shall be inserted the words “referred to in that paragraph that is”;
- (e) in paragraph (4A)(a)—
 - (i) in sub-paragraph (b) after the word “tax”, where it first occurs, there shall be inserted the words “referred to in paragraph (3) that is”, and after the word “tax”, where it secondly occurs, there shall be inserted the words “referred to in that paragraph that is”;
 - (ii) after the words “in respect of any tax” there shall be inserted the words “referred to in paragraph (3) that is”;
- (f) in paragraphs (5) and (6)—
 - (i) for the words “paragraph (1)(a)”, wherever occurring, there shall be substituted the words “paragraph (1A)”;
 - (ii) for the words “paragraph (1)(b)”, wherever occurring, there shall be substituted the words “paragraph (1B)”;
- (g) in paragraph 7(a) after the words “overseas dividend” there shall be inserted the words “or manufactured overseas dividend”;
- (h) in paragraph (8) for the words from “in this paragraph” to the end there shall be substituted the words
“in this paragraph—
 - (i) so far as overseas dividends are concerned, is the territory of the government or public or local authority which issued the securities in question or, where the securities were issued by any other body of persons not resident in the United Kingdom, the territory under whose law that tax would have been payable;
 - (ii) so far as manufactured overseas dividends are concerned, is the territory of the government by which tax is charged on, or in respect of, the making of the manufactured overseas dividend concerned.”

11. In regulation 10—

- (a) in paragraph (1)(a)(iii) for the words from “from which” to “regulation 4(3)” there shall be substituted the words “to which tax referred to in regulation 9(3) is attributable”;
- (b) for paragraphs (2) and (3) there shall be substituted the following paragraphs—
 - “(2) Where under paragraph (1) an overseas dividend or manufactured overseas dividend received is matched with a manufactured overseas dividend paid, any voucher relating to the deduction of overseas tax from the overseas dividend or manufactured overseas dividend received shall, subject to paragraph (3), be forwarded to the recipient of the manufactured overseas dividend paid.

(3) Where under paragraph (1) an overseas dividend received, or a manufactured overseas dividend received on or in respect of the making of which overseas tax has been charged, is matched with more than one manufactured overseas dividend paid, the overseas dividend manufacturer—

(a) shall endeavour to obtain from the payer of the overseas dividend or manufactured overseas dividend received a voucher corresponding to each manufactured overseas dividend paid, or

(b) if, despite reasonable attempts to do so, he is unable to obtain such a voucher, shall prepare a voucher corresponding to each manufactured overseas dividend paid and showing the following amounts—

(i) so much of the gross amount of the overseas dividend or manufactured overseas dividend received as corresponds to the gross amount of the manufactured overseas dividend paid,

(ii) so much of the overseas tax in respect of the overseas dividend or manufactured overseas dividend received as would be eligible for relief as mentioned in regulation 9(7) and relates to the amount of the overseas dividend or manufactured overseas dividend calculated in paragraph (i) above, and

(iii) so much of the actual amount of the overseas dividend or manufactured overseas dividend received as corresponds to the amount of the manufactured overseas dividend paid, and

(c) shall forward the voucher obtained or, as the case may be, prepared by him to the recipient of the manufactured overseas dividend paid by him to which the voucher relates, instead of the voucher referred to in paragraph (2).;”

(c) in paragraph (4)(a) after the word “representative” there shall be inserted the words “or (as the case may be) from the payer of the manufactured overseas dividend received”.

12. In regulation 12(13)—

(a) for paragraph (1) there shall be substituted the following paragraph—

“(1) This regulation applies to a case where a manufactured overseas dividend is paid to a collecting agent in circumstances where, had it been the overseas dividend of which it is representative, it would have been—

(a) a foreign dividend (as defined in section 18(3D) of the Taxes Act(14), or

(b) interest on a quoted Eurobond (as defined by section 124 of that Act(15)) held in a recognised clearing system.”

(b) in paragraph (2)(a)—

(i) the words “subject to paragraph (3)” shall be inserted at the beginning;

(ii) the words “approved United Kingdom” shall be omitted;

(c) after paragraph (2) there shall be added the following paragraph—

“(3) Where a manufactured overseas dividend paid to the collecting agent on behalf of an overseas dividend manufacturer—

(a) is representative of an overseas dividend on overseas securities that are of the same kind as the overseas securities to which a manufactured overseas dividend

(13) Amended by S.I. 1996/1229.

(14) Section 18 was amended by paragraph 4(3) of Schedule 7 to the Finance Act 1996.

(15) Section 124 was amended by paragraph 14 of Schedule 7, paragraph 4 of Schedule 29, paragraph 6(2)(a) of Schedule 38, and Part V(2) of Schedule 41, to the Finance Act 1996.

paid by the collecting agent on behalf of that overseas dividend manufacturer relates, and

- (b) is in an equivalent amount and in respect of the same dividend date as the manufactured overseas dividend paid by him on behalf of that overseas dividend manufacturer,

deduction of an amount on account of income tax shall not be made by the collecting agent under paragraph (2)(a) in respect of the manufactured overseas dividend paid to him.”

13. Regulation 13(16) shall be omitted.

14. In regulation 15—

- (a) in paragraph (1) the words from “or, as the case may be,” to “and regulation 13(2)(a)” shall be omitted;
- (b) in paragraph (2) the words from “Except” to “13(2)(a)” shall be omitted.

16th October 1996

Roger Knapman
Bowen Wells
Two of the Lords Commissioners of Her
Majesty’s Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Manufactured Overseas Dividends) Regulations 1993 (S.I.1993/2004) (“the principal Regulations”). The amendments fall into three categories. First, they disapply the requirement to deduct tax from manufactured overseas dividends on overseas bonds, that is, overseas securities that represent a loan relationship within the meaning of Chapter II of Part IV of the Finance Act 1996. Secondly they apply the collecting agent provisions in Chapter VIIA of Part VI of the Income and Corporation Taxes Act 1988 (“the Taxes Act”) to manufactured overseas dividends that are representative of foreign dividends. Thirdly, they make a number of changes to the provisions of the principal regulations governing the tax treatment of manufactured overseas dividends on overseas equities.

Regulation 1 provides for citation and commencement and regulation 2 for interpretation.

Regulations 3 to 14 amend the principal Regulations.

Regulation 3 amends an existing definition and inserts a new definition (“collecting agent”) in regulation 2 of the principal Regulations, and further amends that regulation so as to provide that regulations 3 to 11, 14 and 15 of the principal Regulations relate only to manufactured overseas dividends on overseas equities.

Regulation 4 inserts a new regulation 2B governing the tax treatment of manufactured overseas dividends on overseas bonds.

Regulation 5 amends regulation 4(4) of the principal Regulations so as to except from the requirement to account for tax under that regulation a case where an approved United Kingdom intermediary is required to pay a manufactured overseas dividend to a non-resident beneficiary in circumstances where the rate of withholding tax that applies is that of the territory where that beneficiary is resident.

Regulation 6 amends regulation 5 of the principal Regulations so as to except from the requirement to deduct tax under paragraph 4(2) of Schedule 23A to the Taxes Act (“Schedule 23A”) a payment of a manufactured overseas dividend by an approved United Kingdom intermediary made as part of a chain of payments by approved United Kingdom intermediaries representative of the same overseas dividend, where the last payment in the chain is made to a non-resident beneficiary in circumstances where the rate of withholding tax that applies is that of the territory where that beneficiary is resident.

Regulation 7 inserts a new regulation 6A in the principal Regulations which reduces the amount of tax payable under paragraph 4(3) of Schedule 23A where overseas tax was charged on the manufactured overseas dividend concerned.

Regulation 8 amends regulation 7 of the principal Regulations so as to provide that tax shall not be required to be accounted for under paragraph 4(3) of Schedule 23A where the payer of the manufactured overseas dividend concerned was entitled to the overseas dividend of which the manufactured overseas dividend is representative.

Regulation 9 inserts a new regulation 7A in the principal Regulations which disapplies paragraph 5 of Schedule 23A (dividends and interest passing through the market) where the manufactured payment referred to in that paragraph is a manufactured overseas dividend.

Regulation 10 amends regulation 9 of the principal Regulations so as to include in the provision for offsetting of tax by an overseas dividend manufacturer cases where overseas tax has been charged on manufactured overseas dividends received by him.

Regulation 11 makes consequential changes to regulation 10 of the principal Regulations (matching of dividends and manufactured overseas dividends) following the amendments made to regulation 9 of the Principal Regulations by regulation 10 of these Regulations.

Regulation 12 makes the following changes to regulation 12 of the principal Regulations (tax treatment of manufactured overseas dividends representative of foreign dividends). First it extends the scope of regulation 12 so as to cover all collecting agents in receipt of such manufactured overseas dividends, and not just approved United Kingdom collecting agents. Secondly, it disapplies the requirement to deduct tax under that regulation in respect of a manufactured overseas dividend paid to a collecting agent on behalf of an overseas dividend manufacturer in cases where that manufactured overseas dividend is in an equivalent amount and in respect of the same dividend date and the same kind of overseas securities as a manufactured overseas dividend paid by the collecting agent on behalf of the same overseas dividend manufacturer.

Regulation 13 revokes regulation 13 of the principal Regulations, and regulation 14 omits in consequence references to regulation 13 in regulation 15 of the principal Regulations.