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STATUTORY INSTRUMENTS

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**2003 No. 2582**

**INCOME TAX**

**The Income Tax (Manufactured Overseas Dividends) (Amendment) Regulations 2003**

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| <i>Made</i>                             | - - - - | <i>9 October 2003</i>    |
| <i>Laid before the House of Commons</i> | - - - - | <i>9 October 2003</i>    |
| <i>Coming into force</i>                | - -     | <i>1st November 2003</i> |

The Treasury, in exercise of the powers conferred upon them by paragraphs 1(1), 4(6) to (7AA) and 8 of Schedule 23A to the Income and Corporation Taxes Act 1988(1), make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Income Tax (Manufactured Overseas Dividends) (Amendment) Regulations 2003 and shall come into force on 1st November 2003.

**Amendments to the Income Tax (Manufactured Overseas Dividends) Regulations 1993**

2. The Income Tax (Manufactured Overseas Dividends) Regulations 1993(2) are amended as follows.

**Amendments to regulation 2**

3.—(1) Amend regulation 2 (interpretation)(3) as follows.

(2) In paragraph (1)—

- (a) in the definitions of “approved United Kingdom collecting agent” and “approved United Kingdom intermediary” for “branch or agency” substitute “permanent establishment”;
- (b) omit the definition of “the Double Taxation Relief Regulations”(4);

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(1) 1988 c. 1. Schedule 23A was inserted by paragraph 1 of Schedule 13 to the Finance Act 1991 (c. 31). Paragraph 1(1) is cited for the meanings of “dividend manufacturing regulations” and “prescribed”. Sub-paragraph (7) of paragraph 4 was amended, and sub-paragraph (7AA) of that paragraph was inserted, by section 159(6) of the Finance Act 1996 (c. 8). Paragraph 8 was amended by section 159(7) and (8) of the Finance Act 1996 and paragraph 13 of Schedule 10 to the Finance Act 1997 (c. 16).

(2) S.I. 1993/2004, relevantly amended by S.I. 1996/1229, S.I. 1996/2643 and S.I. 1997/988.

(3) Regulation 2 was relevantly amended by regulation 3(b) and (c) of S.I. 1996/1229 and regulation 3(1) of S.I. 1996/2643.

(4) The reference is to the Double Taxation Relief (Taxes on Income) (General) (Manufactured Overseas Dividends) Regulations 1993 (S.I. 1993/1957) which were amended by S.I. 1995/1551 and S.I. 1996/2654. All these regulations are revoked by S.I. 2003/2581 with effect from 1st November 2003.

(c) for the definition of “United Kingdom recipient” substitute—

““United Kingdom recipient” shall be construed in accordance with paragraph 4(3A) of Schedule 23A(5).”.

(3) After paragraph (2) add—

“(3) In these Regulations references to a permanent establishment shall be read, in relation to accounting periods beginning before 1st January 2003, as references to a branch or agency.”.

### **Amendments to regulation 3**

4.—(1) Amend regulation 3 (prescribed rates of relevant withholding tax) as follows.

(2) In paragraph (1)(a)(i) for “branch or agency” substitute “permanent establishment”.

(3) Omit paragraph (4).

### **Amendments to regulation 4**

5.—(1) Amend regulation 4 (tax treatment of approved manufactured overseas dividends paid to approved United Kingdom intermediaries or approved United Kingdom collecting agents)(6) as follows.

(2) In paragraph (2)(a)(i) for “branch or agency” substitute “permanent establishment”.

(3) For paragraph (4) substitute—

“(4) Paragraph (3) shall not apply where either paragraph (5) or (6) applies.

(5) This paragraph applies where the approved United Kingdom intermediary or approved United Kingdom collecting agent pays, in accordance with regulation 5, and without deduction of tax, a manufactured overseas dividend representative of the same overseas dividend as is represented by the manufactured overseas dividend received by him.

(6) This paragraph applies where the approved United Kingdom collecting agent is required to pay to an approved United Kingdom intermediary a manufactured overseas dividend representative of the same overseas dividend as is represented by the manufactured overseas dividend received by him and the approved United Kingdom intermediary—

(a) pays as mentioned in paragraph (5) the manufactured overseas dividend, and

(b) issues a notice to the approved United Kingdom collecting agent authorising him to make the payment without deduction of tax.”.

### **Amendments to regulation 5**

6.—(1) Amend regulation 5 (tax treatment of approved manufactured dividends paid to persons resident outside the United Kingdom)(7) as follows.

(2) In paragraph (1)—

(a) at the beginning insert “Subject to paragraph (1A),”;

(b) for “the circumstances prescribed by paragraph (2)” substitute “either of the circumstances prescribed by paragraphs (1B) and (2)”.

(3) After paragraph (1) insert—

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(5) Paragraph 4(3A), together with paragraph 4(3B), was inserted by section 159(5) of the Finance Act 1996.

(6) Regulation 4 was amended by regulation 4 of S.I. 1996/1229, regulation 5 of S.I. 1996/2643 and regulation 4 of S.I. 1997/988.

(7) Regulation 5 was amended by regulation 4 of S.I. 1996/1229 and regulation 6 of S.I. 1996/2643.

“(1A) Where a manufactured overseas dividend is paid in the circumstances prescribed by paragraph (1B) by a person who is not an approved United Kingdom intermediary, the 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, 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.

(1B) The circumstances prescribed by this paragraph are where—

- (a) a manufactured overseas dividend is paid by a person who is resident in the United Kingdom, or, if not so resident, makes the payment in the course of a trade which he carries on through a permanent establishment in the United Kingdom;
- (b) the payment is to or for the benefit of a person beneficially entitled to it who is not a United Kingdom recipient; and
- (c) regulation 4(1) does not apply.”.

(4) In paragraph (2)—

- (a) for the words from “where a manufactured overseas dividend” to the word “or” immediately preceding sub-paragraph (b) substitute—

“where—

- (a) a manufactured overseas dividend is paid by an approved United Kingdom intermediary who, if not resident in the United Kingdom, makes the payment in the course of a trade which he carries on through a permanent establishment in the United Kingdom; and;
- (b) in sub-paragraph (b)(ii) for the words from “branch or agency” to “applies” substitute “permanent establishment in the United Kingdom and makes the payment to or for the benefit of a person beneficially entitled to it who is not a United Kingdom recipient”.

#### **Amendment to regulation 6**

7. In regulation 6(1) (retention and record of notices given under regulations 4 and 5) for “(4)(c)” substitute “(6)(b)”.

#### **Amendments to regulation 7(2)**

8. In regulation 7(2) (disapplication of paragraph 4(3) of Schedule 23A)—

- (a) for sub-paragraph (a) substitute—

“(a) pays, in accordance with regulation 5, and without deduction of tax, a manufactured overseas dividend representative of the same overseas dividend as is represented by the manufactured overseas dividend received by him, or;”

- (b) omit sub-paragraph (b).

#### **Amendment to regulation 8**

9. In regulation 8 (tax treatment of manufactured overseas dividends to which regulations 4, 5 and 7 apply – further provision) for “branch or agency” substitute “permanent establishment”.

### Amendments to regulation 9A

**10.**—(1) Amend regulation 9A (offsetting of tax by overseas dividend manufacturers who are not United Kingdom intermediaries)(**8**) as follows.

(2) After paragraph (2) insert—

“(2A) This paragraph applies where an overseas dividend manufacturer who is not an approved United Kingdom intermediary receives in any chargeable period overseas dividends or manufactured overseas dividends and pays in that period manufactured overseas dividends to which regulation 5 applies that are representative of those overseas dividends or manufactured overseas dividends received.

(2B) Where paragraph (2A) applies—

- (a) relief under section 811 of the Taxes Act shall be given to the overseas dividend manufacturer in respect of any tax referred to in regulation 9(1A) that is attributable to the overseas dividends or manufactured overseas dividends received by him; and
- (b) no other relief under Part 18 of the Taxes Act may be claimed by him in respect of any such tax.”.

### Amendments to regulation 10

**11.**—(1) Amend regulation 10 (matching of dividends and manufactured overseas dividends)(**9**) as follows.

(2) In paragraph (1)(b) for the words from “by reason of—” to “nil percent.” substitute “by virtue of regulation 5”.

(3) In paragraph (2)—

- (a) after “paid” insert “to a United Kingdom recipient”;
- (b) for “recipient of the manufactured overseas dividend paid” substitute “United Kingdom recipient”.

(4) In paragraph (3)—

- (a) after “paid” in the first place where it occurs insert “to a United Kingdom recipient”;
- (b) in sub-paragraph (a) and in sub-paragraph (b) (three times) for “paid” substitute “so paid”;
- (c) in sub-paragraph (c) for “recipient” substitute “United Kingdom recipient”.

(5) In paragraph (4)—

- (a) after “paid” in the first place where it occurs insert “to a United Kingdom recipient”;
- (b) in sub-paragraphs (a) and (b) for “paid” substitute “so paid”;
- (c) in sub-paragraph (c) for “recipient” substitute “United Kingdom recipient”.

### Amendments to regulation 14

**12.**—(1) Amend regulation 14 (records to be kept in respect of certain manufactured overseas dividends paid without deduction of tax) as follows.

(2) For paragraph (1)(b) substitute—

“(b) the name of the person to whom payment was made,

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(8) Regulation 9A was inserted by regulation 7 of S.I. 1997/988.

(9) Regulation 10 was relevantly amended by regulation 11(b) of S.I. 1996/2643.

- (ba) his grounds for believing that the payment should be made without deduction of tax, and.”
- (3) For paragraphs (2) and (3) substitute—
- “(2) This regulation applies to any manufactured overseas dividend which an overseas dividend manufacturer or an approved United Kingdom collecting agent, by virtue of regulation 5(1B), pays without deduction of tax.
- (3) An overseas dividend manufacturer or an approved United Kingdom collecting agent—
- (a) shall retain for a period of six years—
- (i) any record required to be maintained by him under paragraph (1), and
- (ii) any evidence relevant to his grounds for believing that the payment should be made without deduction of tax; and
- (b) whenever required to do so within that period, shall make any such record or evidence available for inspection by an officer of the Board.”.
- (4) In paragraph (4) for “certificate” substitute “evidence”.

9 October 2003

*Jim Murphy*  
*Derek Twigg*  
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.

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## 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 main purpose of the amendments is to remove the requirements for persons making payments of manufactured overseas dividends (within the meaning given by paragraph 4(1) of Schedule 23A to the Income and Corporation Taxes Act 1988 (c. 1)) to account for and pay tax in respect of such payments where payment is to persons who are not United Kingdom recipients (within the meaning given by paragraph 4(3A) of that Schedule). The amendments also take into account the general replacement of references in tax legislation to “branch or agency” by references to “permanent establishment” (see section 153 of the Finance Act 2003 (c. 14)).

Regulation 1 provides for citation and commencement.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends regulation 2 (interpretation).

Regulation 4 amends regulation 3 (prescribed rates of relevant withholding tax).

Regulation 5 amends regulation 4 (tax treatment of approved manufactured overseas dividends paid to approved United Kingdom intermediaries or approved United Kingdom collecting agents).

Regulation 6 amends regulation 5 (tax treatment of approved manufactured dividends paid to persons resident outside the United Kingdom).

Regulation 7 amends regulation 6 (retention and record of notices given under regulations 4 and 5).

Regulation 8 amends regulation 7(2) (disapplication of paragraph 4(3) of Schedule 23A).

Regulation 9 amends regulation 8 (tax treatment of manufactured overseas dividends to which regulations 4, 5 and 7 apply – further provision).

Regulation 10 amends regulation 9A (offsetting of tax by overseas dividend manufacturers who are not United Kingdom intermediaries).

Regulation 11 amends regulation 10 (matching of dividends and manufactured overseas dividends).

Regulation 12 amends regulation 14 (records to be kept in respect of certain manufactured overseas dividends paid without deduction of tax).