

1989 No. 1299

INCOME TAX

The Income Tax (Stock Lending) Regulations 1989

Made - - - - - *27th July 1989*

*Laid before the House of
Commons* *28th July 1989*

Coming into force *18th August 1989*

The Treasury, in exercise of the powers conferred on them by section 129 of the Income and Corporation Taxes Act 1988(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Stock Lending) Regulations 1989 and shall come into force on 18th August 1989.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“Board” means the Commissioners of Inland Revenue;

“gilt-edged securities” means—

- (a) the securities specified in Part II of Schedule 2 to the Capital Gains Tax Act 1979(b),
- (b) stocks and bonds issued under section 12 of the National Loans Act 1968(c), and
- (c) stocks and bonds guaranteed by the Treasury and issued under the Electricity (Scotland) Acts 1943 to 1954(d) and the Electricity Acts 1947 and 1957(e);

“market maker”, in relation to securities of a particular kind or options to buy or sell securities of a particular kind, means a person who—

- (a) holds himself out at all normal times in compliance with the rules of the Stock Exchange as willing—
 - (i) to buy and sell securities of that kind, or
 - (ii) to grant or take options to buy or sell securities of that kind, or
 - (iii) to buy and sell options to buy or sell securities of that kind, at a price specified by him; and
- (b) is recognised as doing so by the Council of the Stock Exchange;

“other United Kingdom securities” means shares or stock, other than gilt-edged securities and quoted Eurobonds held in a recognised clearing system within the meaning of section 124 of the Taxes Act 1988(f), in respect of which the conditions are fulfilled—

(a) 1988 c. 1.
(b) 1979 c. 14; Schedule 2 was amended by section 67(4) of and Part II of Schedule 9 to the Gas Act 1986 (c. 44).
(c) 1968 c. 13.
(d) 1943 c. 32, 1947 c. 54, 1952 c. 22 and 1954 c. 60.
(e) 1947 c. 54 and 1957 c. 48.
(f) Section 124 was amended by section 76 of the Finance Act 1988 (c. 39).

- (a) that, at the time the arrangement in question is made, the shares or stock have been admitted to the Official List of The Stock Exchange, or to dealings on the Unlisted Securities Market or Third Market of the Stock Exchange; and
 - (b) that, where the shares or stock are issued by a body of persons not resident in the United Kingdom, part or all of any interest, dividends or other annual payments payable out of or in respect of such shares or stock constitutes relevant foreign dividends for the purposes of section 123 of the Taxes Act 1988(a);
- and includes depository receipts for such shares or stock;

“overseas securities” means—

- (a) stocks, shares and other securities issued by a body of persons not resident in the United Kingdom which are not other United Kingdom securities, and
- (b) quoted Eurobonds held in a recognised clearing system within the meaning of section 124 of the Taxes Act 1988;

“the principal section” means section 129 of the Taxes Act 1988;

“section 149B(9)” means section 149B(9) of the Capital Gains Tax Act 1979(b);

“subsection (1)”, “subsection (2)” and “subsection (3)” mean subsection (1), subsection (2) and subsection (3) of the principal section as the case may be;

“the Taxes Act 1988” means the Income and Corporation Taxes Act 1988.

(2) For the purposes of paragraph (1) above a depository receipt for shares or stock is an instrument acknowledging—

- (a) that a person holds such shares or stock or evidence of the right to receive them, and
- (b) that another person is entitled to rights, whether expressed as units or otherwise, in or in relation to shares or stock of the same kind, including the right to receive such shares or stock (or evidence of the right to receive them) from the person mentioned in sub-paragraph (a) above,

except that for those purposes a depository receipt for shares or stock does not include an instrument acknowledging rights in or in relation to shares or stock if they are issued or sold under terms providing for payment in instalments and for the issue of the instrument as evidence that an instalment has been paid.

Commencement of the principal section

3. The date specified by these Regulations for the purpose of the application of the principal section to transfers made in pursuance of an arrangement mentioned in subsection (1) or (2) is 18th August 1989.

Application of subsection (3) and section 149B(9)

4. Neither subsection (3) nor section 149B(9) shall apply to a transfer, or a disposal and acquisition, made in pursuance of an arrangement mentioned in subsection (1) or (2) unless—

- (a) in relation to an arrangement under which the securities to be transferred are gilt-edged securities, the conditions specified in regulation 5, or
- (b) in relation to an arrangement under which the securities to be transferred are other United Kingdom securities, the conditions specified in regulation 6, or
- (c) in relation to an arrangement under which the securities to be transferred are overseas securities, the conditions specified in regulation 7,

are fulfilled.

Conditions relating to the transfer of gilt-edged securities

5.—(1) The conditions specified in this regulation in relation to an arrangement mentioned in subsection (1) are—

- (a) that the person referred to as A in the principal section is an approved borrower;
- (b) that the person referred to as B in the principal section is an approved moneybroker;
- (c) that the arrangement takes a form approved by the Board;

(a) Section 123 was amended by section 76 of the Finance Act 1988.

(b) Section 149B was inserted by paragraph 26 of Schedule 29 to the Income and Corporation Taxes Act 1988.

- (d) that the contract of sale mentioned in the subsection was entered into by A in the ordinary course of his business;
 - (e) that where A is an approved borrower by virtue of sub-paragraph (b) of the definition in paragraph (4) below, the additional conditions specified in paragraph (2) below are fulfilled.
- (2) The additional conditions specified in this paragraph are—
- (a) that the final redemption date of any security to which the arrangement relates is not more than seven years after the date on which the arrangement is made;
 - (b) that the arrangement provides that the transfer referred to in paragraph (a) of subsection (1) of any security to which the arrangement relates is not to be effected—
 - (i) within the three weeks before any date in an interest period which is an ex-dividend date in relation to that security where the final redemption date of that security would be more than five years after that ex-dividend date, or
 - (ii) on any date in an interest period which is an ex-dividend date in relation to that security in any other case;
 - (c) that the transfer referred to in paragraph (b) of subsection (1) is effected—
 - (i) more than three weeks before any date in an interest period which is an ex-dividend date in relation to that security where the final redemption date of that security would be more than five years after that ex-dividend date, or
 - (ii) before any date in an interest period which is an ex-dividend date in relation to that security in any other case.
- (3) The conditions specified in this regulation in relation to an arrangement mentioned in subsection (2) are—
- (a) that B is an approved moneybroker;
 - (b) that the person referred to as C in the principal section, and any person for whom C is acting in connection with the arrangement as an agent or nominee, is an approved lender;
 - (c) that the arrangement takes a form approved by the Board.
- (4) In this regulation—
- “approved borrower” means a person who, at the time when the arrangement is made—
- (a) is a market maker in relation to securities of the kind which are the subject of the arrangement, or
 - (b) has a money market dealing relationship with the Bank of England and is approved by the Board as such a person for the purposes of this regulation;
- “approved lender” means a person who, at the time when the arrangement is made, is approved as a lender by the Board for the purposes of this regulation;
- “approved moneybroker” means a member of the Stock Exchange who, at the time when the arrangement is made, carries on business as a money broker and is approved as such by the Board for the purposes of this regulation;
- “ex-dividend date” in relation to a security means the date in any interest period on which the security is first listed in The Stock Exchange Daily Official List at a price excluding the value of the interest payment next payable;
- “final redemption date” means the latest date on which a security may be redeemed in accordance with the terms on which it was issued;
- “interest period” means any period between the dates on which interest is payable on a security or, where no interest has yet been paid, the period between the date of issue of a security and the first date on which interest is payable on that security.

Conditions relating to the transfer of other United Kingdom securities

- 6.—(1) The conditions specified in this regulation in relation to an arrangement mentioned in subsection (1) are—
- (a) that, subject to paragraph (2) below, the person referred to as A in the principal section is an approved borrower;
 - (b) that the person referred to as B in the principal section is an approved moneybroker;
 - (c) that the arrangement takes a form approved by the Board;

- (d) that, where A is an approved borrower by virtue of sub-paragraph (a) of the definition in paragraph (4) below, the contract of sale mentioned in the subsection was entered into by him in the ordinary course of his business;
- (e) that, where A is an approved borrower by virtue of sub-paragraph (b) of the definition in paragraph (4) below, the contract of sale mentioned in the subsection was entered into by him in the ordinary course of his business as a market maker in relation to options to buy or sell securities of the kind sold under the contract of sale;
- (f) that, where A is an approved borrower by virtue of sub-paragraph (c) of the definition in paragraph (4) below—
 - (i) the contract of sale mentioned in the subsection was entered into by him in the ordinary course of his business as a market maker in relation to securities carrying rights of subscription for, or conversion into, securities of the kind sold under the contract of sale, and
 - (ii) he will, by the time that the arrangement is to take effect, have irrevocably exercised rights of subscription for, or conversion into, a quantity of securities of the same kind as those to be transferred by B which is not less than that to be so transferred.

(2) Where the securities to which an arrangement mentioned in subsection (1) relates—

- (a) have been issued or guaranteed by the government of any of the countries or territories which, at the time when the arrangement is made, is mentioned in Schedule 3 or Schedule 6 to the British Nationality Act 1981(a), the Channel Islands, the Isle of Man or the Republic of Ireland or by a public or local authority in the United Kingdom, any such country or territory, the Channel Islands, the Isle of Man or the Republic of Ireland, or
- (b) are denominated in sterling and have been issued by the government of, or a public or local authority in, any other country or territory,

the condition contained in paragraph (1)(a) above has effect as if the reference to A being an approved borrower was a reference to A being an approved borrower by virtue of sub-paragraph (a) of the definition in paragraph (4) below.

(3) The conditions specified in this regulation in relation to an arrangement mentioned in subsection (2) are—

- (a) that B is an approved moneybroker;
- (b) that the person referred to as C in the principal section, and any person for whom C is acting in connection with the arrangement as a nominee, is an approved lender;
- (c) that the arrangement takes a form approved by the Board.

(4) In this regulation—

“approved borrower” means a person who, at the time when the arrangement is made—

- (a) is a market maker in relation to securities of the kind which are the subject of the arrangement or similar securities, or
- (b) is a market maker in relation to options to buy or sell securities of the kind which are the subject of the arrangement, or
- (c) is a market maker in relation to securities which carry rights of subscription for, or conversion into, securities of the kind which are the subject of the arrangement,

and for the purposes of this definition securities shall be deemed to be similar if they would be so deemed for the purposes of sections 731 to 734 of the Taxes Act 1988; “approved lender” and “approved moneybroker” have the same meanings as in regulation 5.

Conditions relating to the transfer of overseas securities

7.—(1) The conditions specified in this regulation in relation to an arrangement mentioned in subsection (1) are—

- (a) that the person referred to as A in the principal section is an approved borrower;

(a) 1981 c. 61; Schedule 3 was amended by S.I. 1983/882, 1699 and section 1 of, and paragraph 8 of the Schedule to, the Brunei and Maldives Act 1985 (c. 3) and Schedule 6 was amended by S.I. 1983/882.

- (b) that the person referred to as B in the principal section is an approved lender or an approved intermediary;
- (c) that the arrangement is approved, or takes a form approved, by the Board;
- (d) that the securities to which the arrangement relates are held overseas;
- (e) that the contract of sale mentioned in the subsection provides that A will deliver outside the United Kingdom the securities he has contracted to sell.

(2) The conditions specified in this regulation in relation to an arrangement mentioned in subsection (2) are—

- (a) that B is an approved intermediary;
- (b) that the person referred to as C in the principal section, and any person for whom C is acting in connection with the arrangement as a nominee, is an approved lender;
- (c) that the arrangement is approved, or takes a form approved, by the Board;
- (d) that the securities to which the arrangement relates are held overseas.

(3) In this regulation—

“approved borrower” means a person who at the time when the arrangement is made—

- (a) is a market maker in securities of the kind which are the subject of the arrangement, or
- (b) is approved as such by the Board for the purposes of this regulation;

“approved intermediary” means a person who, at the time when the arrangement is made—

- (a) is a member of the Stock Exchange who carries on business as a money broker and is approved as such by the Board for the purposes of this regulation, or
- (b) is approved as such by the Board for the purposes of this regulation;

“approved lender” means a person who, at the time when the arrangement is made, is approved as a lender by the Board for the purposes of this regulation;

“held overseas” means held by B or C, as the case may be, in such circumstances that any interest, dividends or other annual payments payable out of or in respect of securities so held are not within the charge to tax under the Schedule referred to as Schedule C in section 17 of the Taxes Act 1988(a) or the charge to tax under Schedule D by virtue of section 123 of that Act(b).

*Kenneth Carlisle
David Lightbown*

27th July 1989

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the application of section 129 of the Income and Corporation Taxes Act 1988 (“the principal section”) to transfers made after 17th August 1989 in pursuance of stock lending arrangements. They also specify the conditions which must be fulfilled before the reliefs from income tax and capital gains tax conferred by the principal section and section 149B(9) of the Capital Gains Tax Act 1979 (“section 149B(9)”) (and, by virtue of section 727(2) of the 1988 Act, from the charge on accrued interest) can apply to such transfers.

Stock lending enables market makers in various types of securities to “borrow” securities from institutional investors in order to be able to make delivery under contracts of sale which

(a) Section 17 was amended by section 76 of the Finance Act 1988.

(b) Section 123 was amended by section 76 of the Finance Act 1988.

they have entered into. The market maker undertakes to replace the "borrowed" stock at a later date with securities of the same kind. Although termed "stock lending", the arrangement involves transfers of ownership which would give rise to income tax and capital gains tax charges apart from the reliefs given by those sections.

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

Regulation 3 provides for the application of the principal section to transfers made after 17th August 1989.

Regulation 4 provides that the reliefs conferred by the principal section and section 149B(9) are not to apply to transfers in pursuance of stock lending arrangements unless the conditions specified in the Regulations are fulfilled.

Regulation 5 specifies the conditions attaching to relief for transfers in pursuance of stock lending arrangements in gilt-edged securities.

Regulation 6 specifies the conditions attaching to relief for transfers in pursuance of stock lending arrangements in United Kingdom securities other than gilt-edged securities and quoted Eurobonds held in a recognised clearing system.

Regulation 7 specifies the conditions attaching to relief for transfers in pursuance of stock lending arrangements in overseas securities.

£1.35 net

ISBN 0 11 097299 6

Printed in the United Kingdom by Her Majesty's Stationery Office at Edinburgh Press

745 WO 1260 C28 8/89 452/4 19593 PS 9901487 (271073)