

2007 No. 2487

INCOME TAX

CORPORATION TAX

**The Income Tax (Manufactured Overseas Dividends)
(Amendment) Regulations 2007**

<i>Made</i>	- - - -	<i>30th August 2007</i>
<i>Laid before the House of Commons</i>		<i>31st August 2007</i>
<i>Coming into force</i>	- -	<i>1st October 2007</i>

The Treasury make the following Regulations in exercise of the powers conferred by paragraphs 1(1), 4(6), and 8(1) and (1A) of Schedule 23A to the Income and Corporation Taxes Act 1988(a) and section 590(3) of the Income Tax Act 2007(b).

Citation, commencement and effect

1. These Regulations may be cited as the Income Tax (Manufactured Overseas Dividends) (Amendment) Regulations 2007, shall come into force on 1st October 2007, and shall have effect in relation to manufactured overseas dividends made or treated as made on or after that day.

Amendment of the Income Tax (Manufactured Overseas Dividends) Regulations 1993

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

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

(2) In paragraph (1) for “paragraph (4)” substitute “paragraphs (5) and (6)”.

(3) Add the following paragraphs at the end—

“(5) Where the recipient of the manufactured overseas dividend is a company, the reference in paragraph (1) to the highest rate is a reference to the highest rate that would have applied in relation to the overseas dividend specified in paragraph (1)(a) paid to a company which is within paragraphs (i) to (iii) of that paragraph.

(6) Where the manufactured overseas dividend—

(a) 1998 c. 1; Schedule 23A was inserted by paragraph 1 of Schedule 13 to the Finance Act 1991 (c. 31). Sub-paragraph (1) of paragraph 8 was amended by section 159(7) of the Finance Act 1996 (c. 8) and paragraph 13(1) of Schedule 10 to the Finance Act 1997 (c. 16). Sub-paragraph (1A) of paragraph 8 was inserted by section 159(8) of the Finance Act 1996. In paragraph 1(1) of Schedule 23A, see the definitions of “dividend manufacturing regulations” and “prescribed”.

(b) 2007 c. 3.

(c) S.I. 1993/2004; relevant amending instruments are S.I. 1996/2643, 1997/988 and 2003/2582.

(d) Regulation 3 was amended by S.I. 2003/2582.

- (a) is paid to, or for the benefit of, a registered pension scheme (within the meaning given in Part 4 of the Finance Act 2004)(a), or
- (b) is linked solely to pension business for the purposes of section 438 of the Taxes Act(b) at the time that the payment is made,

the reference in paragraph (1) to the highest rate is a reference to the rate that would have been suffered by the recipient in relation to the overseas dividend of which that manufactured overseas dividend is representative.”.

4. After regulation 5 insert—

“Chains of payments where last payment made to, or for benefit of, registered pension scheme or is linked solely to pension business

5A.—(1) This regulation applies where—

- (a) a person (the “original payer”) pays a manufactured overseas dividend, and
- (b) the payment is made to an approved United Kingdom intermediary or to an approved United Kingdom collecting agent as part of a chain of payments where conditions A to D are met.

(2) Condition A is that each payment in the chain, apart from the first, is a payment by an approved United Kingdom intermediary or an approved United Kingdom collecting agent of a manufactured overseas dividend representative of the same overseas dividend.

(3) Condition B is that the last payment in the chain—

- (a) is made to, or for the benefit of, a registered pension scheme (within the meaning given in Part 4 of the Finance Act 2004), or
- (b) is linked solely to pension business for the purposes of section 438 of the Taxes Act at the time that the payment is made.

(4) Condition C is that the last payment in the chain is made by a person who—

- (a) is resident in the United Kingdom, or
- (b) is not resident in the United Kingdom, but makes the payment in the course of a trade carried on through a permanent establishment.

(5) Condition D is that each recipient of payment in the chain has issued a notice to the original payer to make the payment at the applicable rate of relevant withholding tax.

(6) The applicable rate of relevant withholding tax for each payment in the chain shall be determined in accordance with paragraphs (7) and (8).

(7) If the last payment in the chain is made to, or for the benefit of, a registered pension scheme, the applicable rate shall be determined as if the person to whom the payment is made were the registered pension scheme to which the last payment in the chain is made.

(8) If the last payment in the chain is linked solely to pension business at the time that the payment is made, the applicable rate shall be determined as if the person to whom the payment is made were the person to whom the last payment in the chain is made.

(9) For the purposes of condition A (see paragraph (2)) it does not matter whether or not the first payment in the chain was made by an approved United Kingdom intermediary or an approved United Kingdom collecting agent.”.

5. In regulation 7(c) (disapplication of paragraph 4(3) of Schedule 23A) for paragraph (3A) substitute—

(a) 2004 c. 12.
 (b) Section 438 was amended by paragraph 6 of Schedule 3 to the Finance (No. 2) Act 1997 (c. 58), by paragraph 9(1)(a) of Schedule 7 and Part 3 of Schedule 42 to the Finance Act 2004 (c. 12), and by S.I. 2001/3629.
 (c) Paragraph (3A) of regulation 7 was inserted by S.I. 1996/2643, and amended by S.I. 1997/988.

“(3A) Paragraphs (3B) to (3D) apply where, by virtue of paragraph (1), tax is not required to be accounted for and paid in the circumstances prescribed by paragraph (2)(e).

(3B) For the purposes of the Corporation Tax Acts, paragraph 4(4) of Schedule 23A shall apply as if the amount of tax required under section 923 of the Income Tax Act 2007 to be accounted for and paid were amount A or amount B (whichever should be the lower) and as if that amount of tax had been accounted for and paid.

(3C) For the purposes of the Income Tax Acts, section 923 of the Income Tax Act 2007 shall apply as if the amount of tax which the recipient must account for and pay were amount A or amount B (whichever should be the lower).

(3D) For the purposes of paragraphs (3B) and (3C)—

- (a) amount A is an amount equal to the excess of the gross amount of the overseas dividend over the amount of that overseas dividend received by the overseas dividend manufacturer, and
- (b) amount B is an amount equal to the excess of the gross amount of the overseas dividend over the amount of the manufactured overseas dividend paid by the overseas dividend manufacturer which represents that dividend.

(3E) In paragraph (3D)(b) the reference to the manufactured overseas dividend paid by the overseas dividend manufacturer does not include any payment treated as made treated as made under—

- (a) section 736B of the Income and Corporation Taxes Act 1988(a) (deemed manufactured payments in the case of stock lending arrangements), or
- (b) section 737A of the Income and Corporation Taxes Act 1988(b) (sale and repurchase of securities: deemed manufactured payments).”.

6. In regulation 9(c) (offsetting of tax by overseas dividend manufacturers), in paragraph (4B), for “regulation 5” substitute “regulation 3(6), 5 or 5A”.

7. In regulation 9A(d) (offsetting of tax by overseas dividend manufacturers who are not United Kingdom intermediaries), in paragraph (2A), for “regulation 5” substitute “regulation 3(6), 5 or 5A”.

8. In regulation 10(e) (matching of dividends and manufactured overseas dividends), in paragraph (1)(b), for “regulation 5” substitute “regulation 3(6), 5 or 5A”.

Steve McCabe
Claire Ward

30th August 2007

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Section 736B was inserted by paragraph 3 of Schedule 10 to the Finance Act 1997 (c. 16), and amended by section 84 of the Finance Act 2001 (c. 9), paragraph 4(1) of Schedule 6 to the Finance Act 2006 (c. 25) and paragraph 171 of Schedule 1 to the Income Tax Act 2007.

(b) Section 737A was inserted by section 122 of the Finance Act 1994 (c. 9), and amended by section 159(1) of the Finance Act 1996 (c. 8), Part 6(10) of Schedule 18 to the Finance Act 1997, paragraphs 2 and 7 of Schedule 38 to the Finance Act 2003 (c. 14) and paragraph 5 of Schedule 6 to the Finance Act 2006. Section 737A is repealed in relation to arrangements that come into force on or after 1st October 2007 (see section 47 of, and paragraph 7 of Schedule 14 to, the Finance Act 2007 and S.I. 2007/2483(C. 92)).

(c) Paragraphs (4A) to (4C) of regulation 9 were substituted for paragraph (4A) of that regulation by S.I. 1997/988.

(d) Regulation 9A was inserted by S.I. 1997/988, and paragraph (2A) of regulation 9A was inserted by S.I. 2003/2582.

(e) Paragraph (1)(b) of regulation 10 was amended by S.I. 2003/2582.

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”). Regulations 3 and 4 of these Regulations amend the principal Regulations to allow a manufactured overseas dividend (a “MOD”) to be paid without deduction of tax in circumstances where a registered pension fund would have received the real overseas dividend gross and in circumstances where the MOD is linked solely to pension business for the purposes of section 438 of the Income and Corporation Taxes Act 1988. Regulation 5 of these Regulations amends regulation 7 of the principal Regulations to restrict the amount of foreign tax which may be claimed as double taxation relief. Regulations 6 to 8 of these Regulations make consequential amendments.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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