

2007 No. 3507

RECOVERY OF TAXES

The Recovery of Foreign Taxes Regulations 2007

Made - - - - *12th December 2007*

Laid before the House of Commons *13th December 2007*

Coming into force - - *3rd January 2008*

The Treasury, in exercise of the powers conferred by section 175(1) of the Finance Act 2006^(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Recovery of Foreign Taxes Regulations 2007 and shall come into force on 3rd January 2008.

Interpretation

2. In these Regulations—

“applicant authority” means an authority in a foreign territory which makes a request for recovery in accordance with these Regulations;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs, or an officer of Her Majesty’s Revenue and Customs;

“a contested claim” is one which is subject to action challenging either the foreign claim or the instrument permitting enforcement brought by an interested party before the competent body of the foreign territory in which the applicant authority is situated in accordance with the laws in force there;

“enforcement action” means action to enforce a foreign claim by way of legal proceedings, distress, diligence or other process which might be taken to enforce a United Kingdom claim for income tax of the same amount;

“a final decision” is one against which no appeal lies or against which an appeal lies within a period that has expired without an appeal having been brought by either party to the proceedings;

“instrument permitting enforcement” means—

- (a) any instrument issued by an applicant authority in a foreign territory in relation to a sum claimed by that authority within the jurisdiction of that territory; or
- (b) a decision on that claim given in favour of that authority by a court or tribunal or other competent body in that territory which permits recovery of that claim in that territory or part thereof;

^(a) 2006 c.25.

“request for recovery” means a request for recovery of a relevant foreign tax by an applicant authority;

“the Taxes Acts” has the meaning given in section 118(1) of the Taxes Management Act 1970;

“transmission by electronic means” includes transmission by means of an electronic communications system (and cognate expressions shall be construed accordingly).

Relevant foreign tax claim

3.—(1) For the purposes of these Regulations a claim for a relevant foreign tax by an applicant authority shall be treated as if it were a claim for income tax under the Taxes Acts subject to what follows.

(2) The Commissioners may take such enforcement action as they would for a claim for income tax under the Taxes Acts in the same amount.

Requests for recovery

4.—(1) A request for recovery of a relevant foreign tax by an applicant authority—

(a) shall be communicated in writing; and

(b) shall be in such form and include such information and documentation as is agreed between the Commissioners and the applicant authority for the purposes of effecting recovery.

(2) The Commissioners and the applicant authority may accept and transmit the information required by paragraph (1) and any other relevant communication by electronic means where there is agreement between them to waive paper communication.

(3) The Commissioners and the applicant authority shall agree a minimum amount of the foreign claim for the purposes of making a request for recovery.

(4) The Commissioners shall not be obliged to entertain a request for recovery where the amount concerned is less than the agreed minimum amount.

(5) The amount of the foreign claim shall be stated in such currency as the Commissioners and the applicant authority may agree.

(6) The amount shall be converted into the sterling equivalent using the exchange rate specified in paragraph (7).

(7) The rate of exchange to be used for the purposes of these Regulations shall be the latest selling rate for sterling recorded on the most representative exchange market or markets of the territory in which the applicant authority is situated on the date when the request for recovery is made.

(8) The Commissioners and the applicant authority shall agree how the costs associated with the recovery of the foreign claim shall be met in cases where the final decision does not include a claim for costs.

(9) The Commissioners and the applicant authority shall agree the method and timing of the transfer of the amount recovered to the applicant authority.

Procedure on receipt of request

5. When the Commissioners receive a request for recovery they—

(a) shall acknowledge receipt of the request in writing to the applicant authority, and

(b) may request additional information or documentation from the applicant authority if the agreed information and documentation has not been supplied in accordance with regulation 4(1)(b).

Requests for recovery - further provisions

6. For the purposes of these Regulations—

- (a) a request for recovery made by an applicant authority shall be taken to be duly made in accordance with arrangements relating to international tax enforcement unless the contrary is proved, and
- (b) except as set out in regulations 9, 10 and 11, no question may be raised as to a person's liability on the foreign claim.

Communication of information

7. Information sent to the Commissioners as part of a request for recovery may only be communicated by them to—

- (a) the person mentioned in the request for assistance;
- (b) those persons and authorities responsible for the recovery of the claims, and solely for that purpose, or
- (c) the judicial authorities dealing with matters concerning the recovery of claims.

Adjustment of a foreign claim

8.—(1) This regulation applies where the amount of a foreign claim is amended for any reason.

(2) Where the amendment leads to a reduction in the amount of the foreign claim the following rules apply.

Rule 1

The Commissioners shall continue the action which they have undertaken with a view to recovery but that action shall be limited to the amount still outstanding.

Rule 2

If at the time the Commissioners are informed of the reduction in the amount of the foreign claim, an amount exceeding the amount still outstanding has already been recovered by them, but this amount has not yet been transferred to the applicant authority, the Commissioners shall repay the excess to the person who appears to them to be entitled to it.

(3) Where the amendment leads to an increase in the amount of the foreign claim the following rules apply.

Rule 1

The additional request shall as far as possible be dealt with by the Commissioners at the same time as the original request.

Rule 2

Where, in view of the state of progress of the existing recovery procedure, consolidation of the additional request with the original request is not possible, the Commissioners shall treat that request as a new claim but shall be required to comply with it only if it concerns an amount not less than the minimum amount referred to in regulation 4(3).

Cancellation or payment of a claim

9. In any case where the Commissioners take enforcement action in relation to a foreign claim, and upon receipt of notice in writing by the applicant authority that—

- (a) the taxpayer has made payment in satisfaction of that claim; or
- (b) the claim has been terminated or cancelled for some other reason;

they shall cease any enforcement action in relation to that claim.

Disputed claims

10.—(1) No enforcement action under these Regulations shall be taken against a person if he shows that proceedings relevant to his liability on the foreign claim are pending, or are about to be instituted, before a court, tribunal or other competent body in the foreign territory in question.

(2) For this purpose proceedings relevant to a person's liability on a foreign claim are pending until a final decision is made.

Claims determined in taxpayer's favour

11.—(1) No enforcement action under these Regulations shall be taken against a person if a final decision on the foreign claim has been given in his favour by a court, tribunal or other competent body in the foreign territory in question.

(2) If a person shows that such a decision has been given in respect of part of the claim, no enforcement action under these Regulations shall be taken in relation to that part.

Limitation

12.—(1) The period of limitation or prescription in relation to any issue arising on the recovery of any foreign claim shall be that applicable under the laws in force in the foreign territory in which the applicant authority is situated.

(2) For the purposes of paragraph (1) any step taken by the Commissioners in recovery of a foreign claim in pursuance of a request for assistance shall be deemed to have been taken in the foreign territory in which the applicant authority is situated where that step, if it had been taken by that applicant authority, would have had the effect of suspending or interrupting the period of limitation or prescription in accordance with the laws in force in that territory.

Interest

13.—(1) The applicant authority and the Commissioners shall agree which authority shall charge interest on the foreign claim in question.

(2) Where the applicant authority charges interest on the foreign claim it shall be calculated up to and including the date of payment at the rate applicable under the laws in force in the foreign territory in which the applicant authority is situated.

(3) Where the Commissioners charge interest it shall be calculated from the date of acknowledgement by the Commissioners up to and including the date of payment at the rate applicable under section 178 of the Finance Act 1989(a).

This is so even if the date of acknowledgement is a non-business day within the meaning of section 92 of the Bills of Exchange Act 1882(b).

(4) Interest is payable under this regulation without any deduction of income tax.

(5) For the purposes of this regulation, where—

(a) any payment is made by cheque to Her Majesty's Revenue and Customs, and

(b) the cheque is paid on its first presentation to the banker on whom it is drawn;

the payment shall be treated as made on the day on which the cheque was received by Her Majesty's Revenue and Customs or the applicant authority whichever is the earlier.

(6) Interest charged under this regulation shall be recoverable as if it were interest charged under a provision of the Taxes Management Act 1970(c).

(7) Where interest is payable under regulation 13(2) the applicant authority must provide details to the Commissioners of the daily rate of interest to be applied to the foreign claim.

(a) 1989 c. 26.

(b) 1882 c. 61.

(c) 1970 c. 9.

Evidence

14.—(1) An instrument permitting enforcement of a foreign claim recognised by the Commissioners as an instrument authorising enforcement of the claim in the United Kingdom, together with a certificate of an officer of Revenue and Customs that payment of the claim has not been made to him, or to the best of his knowledge and belief, to any other officer, or to any person acting on his behalf, or on behalf of another officer, or to the applicant authority, is sufficient evidence that the sum mentioned in the instrument is unpaid and is due to the applicant authority.

(2) A certificate of an officer of Revenue and Customs that interest is payable under either regulation 13(2) or 13(3) and that payment of the interest has not been made to him, or, to the best of his knowledge and belief, to any other officer, or to any person acting on his behalf or on behalf of another officer, or to the applicant authority, is sufficient evidence that the interest is unpaid and due to the applicant authority.

(3) For the purposes of this regulation, any document purporting to be such a certificate as is mentioned in paragraphs (1) and (2) is deemed to be such a certificate unless the contrary is proved.

Enforcement in Scotland

15.—(1) For the purposes of enforcement in Scotland, an original, official or certified copy of a final decision on a foreign claim by a court, tribunal or other competent body in the foreign territory in which the applicant authority is situated shall be of the same force and effect as an extract of a decree of the Court of Session for the payment of money bearing a warrant for execution.

(2) For the purposes of paragraph (1), a final decision on a foreign claim is a final decision on a foreign claim which permits recovery of that claim in the foreign territory in which the applicant authority is situated or in part thereof.

Dave Watts

Frank Roy

12th December 2007

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations in conjunction with section 175 of the Finance Act 2006 make provision for the recovery of foreign taxes in the United Kingdom on behalf of a foreign territory.

Regulation 1 provides for citation and commencement.

Regulation 2 provides for interpretation.

Regulation 3 provides what amounts to a relevant foreign tax claim for the purposes of a claim under United Kingdom law. Further it provides that the Commissioners may take enforcement action to recover such a claim.

Regulation 4 lays down rules on how a request for recovery of foreign tax should be made.

Regulation 5 lays down the procedure to be used by the Commissioners on receipt of request for recovery.

Regulation 6 lays down further procedural provisions.

Regulation 7 lays down rules relating to whom the Commissioners may communicate the documents sent to them.

Regulation 8 lays down rules for procedures to be used where claims are adjusted.

Regulation 9 lays down rules relating to the cancellation and payment of claims.

Regulation 10 lays down rules on the procedures to be used when a claim is contested or disputed.

Regulation 11 lays down rules relating to claims which have been determined in the taxpayer's favour.

Regulation 12 lays down provisions in relation to limitation. It is worth noting that some arrangements relating to international tax enforcement made under section 173(1) of the Finance Act 2006 provide that the relevant limitation periods are determined by the laws of the requested state rather than that of the applicant state as is currently provided for in regulation 12. Regulation 12 should therefore be read in conjunction with section 173(1) of the Finance Act 2006 which provides that such a provision in an arrangement relating to international tax enforcement would override the effect of regulation 12.

Regulation 13 lays down provisions in relation to interest.

Regulation 14 lays down rules relating to the evidence required for the enforcement of corresponding foreign claims.

Regulation 15 makes provision relating to enforcement in Scotland.

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

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£3.00

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Stationery Office and Queen's Printer of Acts of Parliament.

E1708 12/2007 171708T 19585