STATUTORY INSTRUMENTS

2009 No. 3333

INCOME TAX

The Tax Credits (Excluded Companies) Regulations 2009

Made - - - -	*15th December 2009*
Coming into force - -	*22nd April 2009*

The Treasury make the following Regulations in exercise of the powers conferred by sections 397BA(3)(b) and (7)(**a**) of the Income Tax (Trading and Other Income) Act 2005(**b**).

In accordance with section 397BA(8) of that Act, a draft of this instrument was laid before the House of Commons and approved by a resolution of that House.

Citation, commencement and effect

1. These Regulations may be cited as the Tax Credits (Excluded Companies) Regulations 2009 and shall have effect from 22nd April 2009 for the tax year 2009-2010 and subsequent tax years.

Excluded companies

2.—(1) A territory which satisfies section 397BA(2)(a) and (b) of the Income Tax (Trading and Other Income) Act 2005 is nevertheless not a qualifying territory for the purposes of section 397AA(**c**) of that Act in relation to the company which makes the relevant distribution if that company is an excluded company.

(2) For the purposes of this regulation, an excluded company is one which is excluded from one or more of the benefits of any double taxation relief arrangements for the time being in force in relation to that territory.

Dave Watts
Tony Cunningham
15th December 2009 — Two of the Lords Commissioners to Her Majesty's Treasury

(**a**) Section 397BA was inserted by section 40 and paragraphs 1 and 5 as read with paragraph 14, of Schedule 19 to the Finance Act 2009 (c. 10).
(**b**) 2005 c. 5.
(**c**) Section 397AA was inserted by section 40 and paragraphs 1 and 3 as read with paragraph 14, of Schedule 19 to the Finance Act 2009.

EXPLANATORY NOTE

(This note is not part of the Regulations)

From 22nd April 2009, an individual who owns a ten percent or greater shareholding in, and who is in receipt of dividends from, a non-UK resident company (within the meaning of the Income Tax (Trading and Other Income) Act 2005 (c. 5)) ("the Act") will be entitled to a dividend tax credit as set out in that Act if the company in question is a resident of a qualifying territory (within the meaning of section 397BA of the Act). If the dividend is one of a series paid as part of a scheme which is a tax advantage scheme (as defined in section 397AA (5) of the Act), each company paying a dividend which is one of that series must be resident in a qualifying territory.

Section 397BA defines "qualifying territory" and related terms. Section 397BA also gives the Treasury power to make regulations which can designate a territory as qualifying, notwithstanding that it does not meet the conditions set out in section 397BA(2), and can designate a territory as non-qualifying, even if it does meet those conditions. The power to make regulations extends to describing a territory by reference to any double taxation relief arrangements for the time being in force in relation to it, and making provision for different descriptions of company. Section 397BA (7) (c) also enables provision to have effect in relation to the tax year current on the day on which the regulations are made.

Regulation 2 provides that a tax credit will not be available where the payer company is excluded from any or all of the benefits of any double taxation relief arrangements in force in relation to its territory of residence.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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