

1988 No. 88

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Foreign Loan Interest) Regulations 1988

Made - - - - - 22nd January 1988

Laid before the House of Commons 29th January 1988

Coming into force 29th February 1988

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 65(5C) of the Finance Act 1982(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Double Taxation Relief (Taxes on Income) (Foreign Loan Interest) Regulations 1988 and shall come into force on 29th February 1988 but shall apply in accordance with regulation 6.

Interpretation

2. In these Regulations unless the context otherwise requires—
- “interbank market” and “relevant interbank market” have the same meaning as in regulation 4;
 - “interest period” has the meaning given to it by regulation 5;
 - “loan” means a loan in respect of which—
 - (a) foreign loan interest is payable,
 - (b) the lender is entitled in accordance with Chapter II of Part XVIII of the Income and Corporation Taxes Act 1970(b) to credit for foreign tax chargeable on or by reference to the foreign loan interest, and
 - (c) the amount of the lender’s financial expenditure is not readily ascertainable;
 - “loan agreement” means, in relation to a loan, any agreement in pursuance of which the loan is made;
 - “subsection (5B)” means subsection (5B) of section 65 of the Finance Act 1982(c).

Determination of just and reasonable sums attributable to the financing of loans—matters to be taken into account

3.—(1) This regulation specifies, for the purposes of supplementing subsection (5B), matters to be taken into account in determining such sum as it is just and reasonable to attribute to the financing of a loan in circumstances where the amount of the lender’s financial expenditure in relation to the loan is not readily ascertainable.

(a) 1982 c. 39; subsection (5C) was inserted by section 67(5) of the Finance (No.2) Act 1987 (c. 51).
(b) 1970 c. 10; relevant amendments to Chapter II of Part XVIII were made by section 67 of the Finance Act 1982 (c. 39).
(c) Subsection (5B) was inserted by section 67(5) of the Finance (No.2) Act 1987 (c. 51).

(2) Paragraph (3) below applies where the rate of interest payable on a loan is, in pursuance of the loan agreement, to be determined in respect of each interest period applicable to the loan by reference to the rate at which deposits are offered in an interbank market having regard to—

- (a) the amount of principal outstanding on the loan during the interest period,
- (b) the currency in which the loan is denominated, and
- (c) the length of the interest period.

(3) Where this paragraph applies, there shall be taken into account the interbank bid rates, determined in accordance with regulation 4, which correspond to each of the offered rates referred to in paragraph (2) above, by reference to which the rate of interest payable on the loan is at any time to be determined, having regard to each of the factors set out in that paragraph.

(4) Where, in relation to a loan—

- (a) the interest rate is not determined under the loan agreement by reference to rates at which deposits are offered in an interbank market, or
- (b) it would be impracticable to establish the bid rates corresponding to the rates at which deposits are offered in the interbank market in question,

there shall be taken into account such amount as would, when deducted from the interest payable on the loan in any interest period, provide the lender with a margin no greater than would be usual in the case of loans of that description.

(5) Where a lender establishes to the satisfaction of the inspector that if, in relation to all loans made by him on which interest arose in any chargeable period, the interbank bid rates referred to in paragraph (3) above and the amounts referred to in paragraph (4) above (or, where such loans fell exclusively within either paragraph (3) above or paragraph (4) above, the said bid rates or the said amounts as the case may be) were taken into account in determining the sums attributable to his financial expenditure, the sums so attributable would be greater than the total amount of the expenditure incurred in financing those loans; then, in that chargeable period only and only if in all the circumstances it is reasonable to do so, there shall be taken into account the apportioned financing cost of the loan determined in accordance with paragraph (6) below.

(6) In determining the apportioned financing cost of a loan, regard is to be had to the cost to the lender in the chargeable period in question of obtaining funds for purposes which include the making of loans in that period, to the terms on which the loan was made and to any other relevant matters.

Determination of interbank bid rates of interest

4.—(1) Where the interbank bid rates referred to in regulation 3(3) are to be taken into account in determining such a just and reasonable attribution as is referred to in subsection (5B), those bid rates shall be taken to be the average of the bids that would be made in relation to each interest period applicable to the loan in the relevant interbank market on terms corresponding to the terms of the loan.

(2) In this regulation “interbank market” means the market that exists between banks in a particular place for the purpose of borrowing and lending funds and dealing in currencies; and “the relevant interbank market” means the interbank market which is most appropriate in relation to a loan having regard to all the terms on which it was made.

Definition of interest period

5. For the purposes of these Regulations, an interest period in relation to a loan is—

- (a) any period specified in the loan agreement as a period for which interest is to be calculated, or, as the case may be, selected in accordance with that agreement by one of the parties thereto, beginning either on the date on which the loan was first made or on the expiry of the preceding interest period; or
- (b) where no such period is specified in the loan agreement, but interest is to be calculated under that agreement by reference to a period of at least 360 days, and is payable on two or more specified dates within that period, any period beginning immediately after one and ending on the next of those dates; or

(c) in any other case, any period not exceeding one year which is appropriate in the circumstances of the loan.

Application of these Regulations

6.—(1) Subject to paragraph (2) below, these Regulations apply in relation to interest payable on or after 1st April 1987.

(2) Where the loan on which interest is payable was made pursuant to an agreement entered into before 1st April 1987, these Regulations do not apply in relation to interest payable before 1st April 1989.

22nd January 1988

B. Pollard
T.J. Painter
Two of the Commissioners of Inland Revenue

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 65 of the Finance Act 1982 (as amended by section 67 of the Finance (No.2) Act 1987) provides that the amount of the credit for foreign tax on loan interest allowable against income tax or corporation tax charged on the profits of the lender is to be limited by treating the amount of the foreign loan interest as reduced by an amount equal to the lender's financial expenditure in relation to the loan which is attributable to the period for which the interest is paid. These Regulations specify matters to be taken into account in determining the amount that it is just and reasonable to attribute to the financing of the loan, in cases where the amount of the lender's financial expenditure in relation to the loan is not readily ascertainable, and make provision with respect to the determination of certain market rates of interest.

Regulation 1 provides for the title and commencement.

Regulation 2 contains definitions.

Regulation 3 specifies that, where the terms of a loan provide for interest payments to be calculated by reference to offered rates for deposits in an interbank market (e.g. LIBOR), the bid rates corresponding to those offered rates (e.g. LIBID) are to be taken into account in determining what is a just and reasonable amount to attribute to the financing of the loan. Different provision is made for cases where the terms of the loan do not so provide, or it would be impracticable to establish the corresponding interbank bid rates in a particular interbank market, or the lender establishes that sums attributable to his financial expenditure as a result of taking into account interbank bid rates or their analogues over a chargeable period would be greater than the expenditure incurred in financing all such loans on which he received interest in that period.

Regulation 4 provides for the determination of interbank bid rates of interest and contains definitions including that of "interbank market".

Regulation 5 contains a further definition.

Regulation 6 provides for the application of these Regulations in relation to interest payable on and after 1st April 1987, except where the interest was payable pursuant to an agreement entered into before that date, in which case the Regulations do not apply to interest payable before 1st April 1989.

85p net

ISBN 0 11 086088 8

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

850 WO 139 C26 1/88 452/4 19593 PS 7944009 (253709)