
STATUTORY INSTRUMENTS

1995 No. 3219

INCOME TAX

**The Income Tax (Stock Lending)
(Amendment No. 2) Regulations 1995**

Made - - - - *6th December 1995*
Laid before the House of
Commons - - - - *11th December 1995*
Coming into force - - *2nd January 1996*

The Treasury, in exercise of the powers conferred on them by section 129 (2B), (4), (4A) and (4B) of the Income and Corporation Taxes Act 1988(1), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Income Tax (Stock Lending) (Amendment No. 2) Regulations 1995 and shall come into force on 2nd January 1996.

Interpretation

2. In these Regulations “the principal Regulations” means the Income Tax (Stock Lending) Regulations 1989(2) and “regulation” means a regulation of those Regulations.

Amendments to the principal Regulations

3. In regulation 2 (1)—

(a) before the definition of “Board” there shall be inserted the following definitions—

““approved agent” means a person who, at the time when the arrangement mentioned in subsection (1) is made, is approved as an agent by the Board for the purposes of these Regulations;

“approved lender” means a person who, at the time when the arrangement mentioned in subsection (1) is made, is approved as a lender by the Board for the purposes of these Regulations;

(1) 1988 c. 1; subsection (4) of section 129 was amended by paragraph 14 (8) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), and subsections (2B), (4A) and (4B) were inserted by section 84 (3) and (4) of the Finance Act 1995 (c. 4).
(2) S.I. 1989/1299; amended by S.I. 1990/2552, 1992/572, 1993/2003, 1995/1283.

“approved nominee” means a person who, at the time when the arrangement mentioned in subsection (1) is made, is approved as a nominee by the Board for the purposes of these Regulations;

“approved stock borrowing and lending intermediary” means a person who, at the time when the arrangement mentioned in subsection (1) is made—

- (a) is—
 - (i) a member of the Stock Exchange, and
 - (ii) a stock borrowing and lending intermediary within the rules of the Stock Exchange acting in that capacity in connection with the arrangement; and
- (b) is approved as a stock borrowing and lending intermediary by the Board for the purposes of these Regulations;”;

- (b) after the definition of “Board of directors”(3) there shall be inserted the following definition—

““first borrower” in relation to a chain of arrangements means the person referred to as A in the principal section;”;

- (c) for the definition of “gilt-edged securities”(4) there shall be substituted the following definitions—

““gilt-edged securities” has the meaning given by section 51A (7) of the Taxes Act 1988(5);

“last lender” in relation to a chain of arrangements means the lender at the end of a chain of arrangements that commences with the arrangement between the persons referred to as A and B in the principal section;”;

- (d) in the definition of “section 271 (9)”(6) for the words “Taxation of Chargeable Gains Act 1992” there shall be substituted the words “1992 Act”;

- (e) after the definition of “the Taxes Act 1988” there shall be inserted the following definition—

““the 1992 Act” means the Taxation of Chargeable Gains Act 1992(7);”.

- 4. After regulation 3A there shall be inserted the following regulations—

“Arrangement for transfer of gilt-edged securities

3B. Where the person referred to as A in the principal section—

- (a) enters into an arrangement mentioned in subsection (1) under which the securities to be transferred are gilt-edged securities, but
- (b) did not enter into the arrangement for the purpose of enabling him to fulfil a contract under which he was required to sell securities,

the principal section shall not be prevented from applying by virtue of subsection (2B) of that section on the grounds that A did not enter into the arrangement for the purpose specified in paragraph (b) above.

(3) Inserted by S.I. 1992/572.

(4) Amended by S.I. 1990/2552.

(5) Section 51A was inserted by section 77 of the Finance Act 1995.

(6) Inserted by S.I. 1993/2003

(7) 1992 c. 12.

Replacement loans

3C.—(1) Where the person referred to as A in the principal section—

- (a) enters into an arrangement mentioned in subsection (1) wholly or partly for the purpose of enabling securities of the same kind as those transferred under a previous stock lending arrangement to which the principal section applies to be returned, and
- (b) the arrangement falls with paragraph (2) below,

the principal section shall not be prevented from applying by virtue of subsection (2B) of that section on the grounds that A did not enter into the arrangement for the purpose, or wholly for the purpose, of enabling him to fulfil a contract under which he was required to sell securities.

(2) An arrangement falls within this paragraph if—

- (a) the securities to be transferred under the arrangement are of the same kind as the securities transferred under the previous arrangement, and
- (b) where the arrangement was not entered into wholly for the purpose mentioned in paragraph (1) (a) above, the sole other purpose was to enable A to fulfil a contract under which he was required to sell securities.”.

5. In regulation 4—

- (a) in paragraph (1), sub-paragraph (a) and the word “or” immediately following it shall be omitted;
- (b) in paragraph (2), after the words “subsection (2A)” there shall be inserted the words “, other than an arrangement for the transfer of gilt-edged securities,”.

6. Regulation 5 shall be omitted.

7. In regulation 6—

- (a) in paragraph (1) for sub-paragraphs (a) and (b) there shall be substituted—
 - “(a) that, subject to sub-paragraph (2) below, the person referred to as A in the principal section is an approved borrower or is both an approved borrower and an approved stock borrowing and lending intermediary;
 - (b) that the person referred to as B in the principal section—
 - (i) is an approved stock borrowing and lending intermediary, or
 - (ii) where A is both an approved borrower and an approved stock borrowing and lending intermediary, is an approved lender, and any person acting for B in connection with the arrangement as an agent or nominee is an approved agent or, as the case may be, an approved nominee;”;
- (b) in paragraph (3) for sub-paragraph (a) there shall be substituted—
 - “(a) that B is an approved stock borrowing and lending intermediary, and accordingly the case is not one to which paragraph (1) (b) (ii) above applies;”;
- (c) in paragraph (4) the definitions of “approved agent” and “approved nominee”**(8)**, and the definitions of “approved lender” and “approved moneybroker”, shall be omitted.

8. In regulation 6A**(9)**—

- (a) in paragraph (1) for sub-paragraphs (a) and (b) there shall be substituted—

(8) The definitions of “approved agent” and “approved nominee” were inserted by S.I. 1993/2003.

(9) Inserted by S.I. 1992/572 and amended by S.I. 1993/2003 and 1995/1283.

- “(a) the person referred to as A in the principal section is an approved borrower, or is both an approved borrower and an approved stock borrowing and lending intermediary;
 - (b) the person referred to as B in the principal section—
 - (i) is an approved stock borrowing and lending intermediary, or
 - (ii) where A is both an approved borrower and an approved stock borrowing and lending intermediary, is an approved lender, and any person acting for B in connection with the arrangement as an agent or nominee is an approved agent or, as the case may be, an approved nominee;”;
 - (b) in paragraph (2) for sub-paragraph (a) there shall be substituted—
 - “(a) that B is an approved stock borrowing and lending intermediary, and accordingly the case is not one to which paragraph (1) (b) (ii) above applies;”.
- 9.** In regulation 6B(10) the definitions of “approved agent” and “approved nominee”(11), and the definitions of “approved lender” and “approved moneybroker”, shall be omitted.
- 10.** In regulation 7 (3)(12)—
- (a) the definitions of “approved agent” and “approved nominee”(11), and the definition of “approved lender” shall be omitted;
 - (b) for the definition of “approved intermediary” there shall be substituted—
 - ““approved intermediary” means a person, who at the time when the arrangement is made, is approved as an intermediary by the Board for the purposes of this regulation;”.
- 11.** In regulation 8(13)—
- (a) in paragraph (1) (d) for the word “initial” in both places where it occurs there shall be substituted the word “last”;
 - (b) in paragraph (2)—
 - (i) for sub-paragraph (a) there shall be substituted the following sub-paragraph—
 - “(a) “approved borrower” and “approved intermediary” have the same meanings as in regulation 7;”;
 - (ii) sub-paragraph (b) shall be omitted.
- 12.** After regulation 8 there shall be added the following regulation—

“Redemption of securities

9.—(1) The cases specified for the purposes of subsection (4B) of the principal section, in relation to which the principal section shall have effect as mentioned in that subsection, are cases where a person (“the borrower”) enters into an arrangement under which—

- (a) another person (“the lender”) is to transfer securities to the borrower or his nominee;
- (b) the arrangement is to terminate on redemption of the securities; and

(10) Inserted by S.I. 1992/572.

(11) Inserted by S.I. 1993/2003.

(12) Amended by S.I. 1990/2552 and 1993/2003.

(11) Inserted by S.I. 1993/2003.

(13) Added by S.I. 1993/2003.

- (c) on redemption of the securities the borrower is to pay to the lender an amount equivalent to the proceeds of redemption.
- (2) Subsection (3) shall not apply to a payment referred to in paragraph (1) (c) above unless the conditions specified in paragraph (4) below are fulfilled.
- (3) Section 271 (9) shall not apply to any disposal and acquisition made in pursuance of an arrangement mentioned in paragraph (1) above unless the conditions specified in paragraph (4) below are fulfilled.
- (4) The conditions specified are that—
- (a) the arrangement is part of a chain of arrangements;
 - (b) the lender is not the last lender in the chain; and
 - (c) The borrower is not the first borrower in the chain.
- (5) Where any of the conditions specified in paragraph (4) above are not fulfilled, the operation of the 1992 Act in relation to disposals and acquisitions made pursuant to the arrangement shall be modified in accordance with paragraph (6), (7) or (8) below (as the case may be).
- (6) Where the arrangement is not part of a chain of arrangements—
- (a) the lender shall be regarded as having disposed of the securities transferred by him to the borrower pursuant to the arrangement—
 - (i) on the occasion of the redemption of the securities and not at the time of that transfer, and
 - (ii) for an amount equivalent to the proceeds of redemption;
 - (b) the borrower shall be regarded as having acquired the securities transferred to him by the lender pursuant to the arrangement on the occasion and for the amount specified in sub-paragraph (a) above.
- (7) Where the lender is the last lender in the chain, he shall be regarded as having disposed of the securities transferred by him to the borrower on the occasion and for the amount specified in paragraph (6) (a) above.
- (8) Where the borrower is the first borrower in the chain, he shall be regarded as having acquired the securities transferred to him by the lender pursuant to the arrangement on the occasion and for the amount specified in paragraph (6) (a) above.”.

6th December 1995

Derek Conway
Bowen Wells
Two of the Lords Commissioners of Her
Majesty’s Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Stock Lending) Regulations 1989 (S.I.1989/1299) (“the principal Regulations”) which provide that transfers under stock lending arrangements falling within section 129 of the Income and Corporation Taxes Act 1988 (“section 129”) shall be disregarded for tax purposes if certain conditions set out in the Regulations are fulfilled.

The amendments made may be categorised as follows:

(1) amendments which together have the effect of removing all restrictions on the circumstances in which section 129 can apply to stock lending arrangements for the transfer of gilt-edged securities. The amendments reflect changes in the gilt-edged securities market which are due to take effect from 2nd January 1996;

(2) provision for stock lending arrangements which terminate on redemption of the securities transferred under the arrangements to be included within the scope of section 129;

(3) provision for loans under which securities are borrowed to meet a demand for the return of other securities (“replacement loans”) to be included within the scope of section 129.

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

Regulation 3 inserts new definitions and amends existing definitions in regulation 2 (1) of the principal Regulations (interpretation).

Regulation 4 inserts regulations 3B and 3C in the principal Regulations. Regulation 3B provides that section 129 shall apply to a stock lending arrangement for the transfer of gilt-edged securities notwithstanding that the arrangement was not entered into to enable the borrower to fulfil a contract under which he was required to sell securities. Regulation 3C makes a similar provision in relation to replacement loans.

Regulation 5 amends regulation 4 of the principal Regulations in consequence of the deletion of regulation 5 of the principal Regulations (conditions relating to the transfer of gilt-edged securities) by regulation 6 of these Regulations.

Regulation 6 omits regulation 5 of the principal Regulations.

Regulations 7 to 11 make consequential amendments to regulations 6 to 8 of the principal Regulations as a result of the new definitions inserted in regulation 2 (1) of the principal Regulations by regulation 3 of these Regulations. In addition regulation 11(a) makes a drafting amendment to regulation 8 of the principal Regulations.

Regulation 12 adds a new regulation (regulation 9) to the principal Regulations which provides that section 129 shall apply in cases where stock lending arrangements terminate on redemption of the securities transferred under the arrangements. The regulation also specifies the conditions to be fulfilled if transfers, disposals and acquisitions made under such arrangements are to be disregarded for tax purposes, and modifies the operation of the Taxation of Chargeable Gains Act 1992 in relation to such disposals and acquisitions where the conditions are not fulfilled.