
STATUTORY INSTRUMENTS

1998 No. 3081

INCOME TAX

**The Controlled Foreign Companies
(Excluded Countries) Regulations 1998**

<i>Made</i>	-	-	-	-	<i>9th December 1998</i>
<i>Laid before the House of Commons</i>	-	-	-	-	<i>10th December 1998</i>
<i>Coming into force</i>	-	-			<i>31st December 1998</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 748(1)(e) and (1A) of the Income and Corporation Taxes Act 1988⁽¹⁾, hereby make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Controlled Foreign Companies (Excluded Countries) Regulations 1998, shall come into force on 31st December 1998, and shall have effect with respect to any appropriate accounting period of a relevant company.

(2) In this regulation—

“appropriate accounting period” means an accounting period ending on or after the day to be appointed under section 199 of the Finance Act 1994⁽²⁾ (corporation tax self-assessment);

“relevant company” means a company resident in the United Kingdom that had a relevant interest in a controlled foreign company at any time during an accounting period of the controlled foreign company ending in an appropriate accounting period of the relevant company;

“relevant interest” shall be construed in accordance with section 752A⁽³⁾ of the Taxes Act.

Interpretation

2.—(1) In these Regulations unless the context otherwise requires—

“controlled foreign company” shall be construed in accordance with section 747(2) of the Taxes Act;

(1) 1988 c. 1. Section 748 was amended by paragraph 3 of Schedule 17 to the Finance Act 1998 (c. 36).

(2) 1994 c. 9. The day to be appointed under section 199 of the Finance Act 1994 is 1st July 1999.

(3) Sections 752 to 752C were substituted for section 752 by paragraph 7 of Schedule 17 to the Finance Act 1998.

“gains” in relation to a controlled foreign company means any gains of that company other than a gain accruing to the company on a disposal of an asset which, on the assumption that the company was within the charge to corporation tax, would have fallen to be treated as a chargeable gain and would not have been taken into account as a receipt in computing the company’s income or profits or gains or losses for the purposes of the Income Tax Acts;

“insurance company” means a company carrying on “long-term business” or “general business” within the meaning of section 1 of the Insurance Companies Act 1982(4);

“Schedule 1” and “Schedule 2” mean Schedule 1 and Schedule 2 respectively to these Regulations;

“section 748(1)(e)” means section 748(1)(e) of the Taxes Act;

“the Taxes Act” means the Income and Corporation Taxes Act 1988.

(2) For the purposes of these Regulations a company is resident in a territory if—

- (a) by reason of the law of that territory relating to domicile, residence or place of management, the company is liable to tax in that territory, or
- (b) if there is either no such law or such law does not apply to the company, the company is incorporated in that territory;

and references in these Regulations to the territory of residence of a company shall be construed accordingly.

(3) For the purposes of these Regulations a controlled foreign company is resident in a territory, within the meaning of paragraph (2), in an accounting period only if it is so resident throughout that accounting period.

(4) References in these Regulations to a branch or agency of a controlled foreign company are references to a branch or agency situated in a territory other than the territory of residence of the controlled foreign company.

Limitation on apportionment of chargeable profits of a controlled foreign company—specified territories

3. The territory in which a controlled foreign company is required to be resident as respects an accounting period for the purposes of section 748(1)(e) is—

- (a) as respects an accounting period beginning before 9th July 1998, any territory specified in Part I or in Part II of Schedule 1;
- (b) as respects an accounting period beginning on or after that date, any territory specified in Part I or in Part II of Schedule 2.

Limitation on apportionment of chargeable profits of a controlled foreign company—conditions to be satisfied

4.—(1) Paragraph (2) specifies the condition which is required to be satisfied as respects an accounting period, for the purposes of section 748(1)(e), by a controlled foreign company which is resident in a territory specified in Part I of Schedule 1 or, as the case may be, in Part I of Schedule 2, in that accounting period.

(2) The condition specified is that the requirement with respect to the controlled foreign company’s income and gains specified in regulation 5 is satisfied by the controlled foreign company in relation to that accounting period.

(3) Paragraph (4) specifies the conditions which are required to be satisfied as respects an accounting period, for the purposes of section 748(1)(e), by a controlled foreign company which is

(4) 1982 c. 50.

resident in a territory specified in column 1 of Part II of Schedule 1 or, as the case may be, in column 1 of Part II of Schedule 2, in that accounting period.

- (4) The conditions specified in this paragraph are that the controlled foreign company—
- (a) satisfies the requirement with respect to its income and gains specified in regulation 5 in relation to that accounting period, and
 - (b) at no time during that accounting period—
 - (i) is entitled to any tax exemption, tax reduction or other benefit, or
 - (ii) falls within any condition,specified in column 2 of Part II of Schedule 1 or, as the case may be, in column 2 of Part II of Schedule 2, opposite the specification of the territory in which the controlled foreign company is resident.

Income and gains requirement

5.—(1) The requirement with respect to the income and gains of a controlled foreign company as respects an accounting period is that the amount of its non-local source income arising in that accounting period does not exceed whichever is the greater of—

- (a) £50,000 or, where that accounting period is less than twelve months in duration, that amount proportionately reduced, and
- (b) an amount equal to ten per cent. of its commercially quantified income arising in that accounting period.

(2) In paragraphs (1) and (3) “commercially quantified income” means the amount of profits of the controlled foreign company before tax, determined in accordance with generally accepted accounting standards other than an equity basis of accounting, but disregarding capital profits or losses.

(3) Subject to paragraph (4) (special rules for banks and insurance companies), for the purposes of paragraph (1) the amount of a controlled foreign company’s non-local source income arising in an accounting period is the aggregate of the following amounts, namely—

- (a) the gross amount of income consisting of distributions recognised as income in computing the commercially quantified income of that company for that period from the profits of companies not resident in the territory of residence of that company, other than branch or agency income;
- (b) the gross amount of income and gains recognised as income in computing the commercially quantified income of that company for that period and deriving from loans to, or deposits with, persons not resident in the territory of residence of that company, or branches or agencies situated outside that territory of companies resident in that territory, other than branch or agency income and gains;
- (c) the gross amount of income and gains recognised as income in computing the commercially quantified income of that company for that period in relation to royalties payable by persons not resident in the territory of residence of that company, or by branches or agencies situated outside that territory of companies resident in that territory, other than branch or agency income and gains;
- (d) the gross amount of income and gains recognised as income in computing the commercially quantified income of that company for that period in relation to premiums and rents payable in respect of property situated outside the territory of residence of that company by persons not resident in that territory, or by branches situated outside that territory of companies resident in that territory, other than branch or agency income and gains;

- (e) the amount of any branch or agency income and gains recognised as income in computing the commercially quantified income of that company for that period, calculated in accordance with regulation 6;
- (f) the gross amount of any income not falling within any of sub-paragraphs (a) to (e) above that is recognised as income in computing the commercially quantified income of that company for that period and does not constitute income which either—
 - (i) is treated under the laws of the territory of residence of that company as accruing or arising in, or derived from, that territory, or
 - (ii) where there are no laws of that territory treating that income as accruing or arising in, or derived from, that territory or another territory, would be treated as accruing or arising in, or derived from, that territory if there were such laws in force in that territory and those laws were identical to the laws of the United Kingdom treating income as accruing or arising in, or derived from, a territory for the purposes of the Corporation Tax Acts, and which
 - (iii) in either case is within that territory's charge to tax.
- (4) Where—
 - (a) the controlled foreign company concerned is an institution carrying on the business of banking, or an insurance company, and
 - (b) income of that company falling within any of sub-paragraphs (a) to (d) of paragraph (3)—
 - (i) is an integral part of income arising or accruing to the company from the trade of banking or insurance carried on by the company, being income which, if the company were resident in the United Kingdom, would be income arising to the company from a trade for the purposes of the Corporation Tax Acts, and
 - (ii) is within the charge to tax of the territory of residence of that company,

the aggregate amount of that income shall be disregarded in computing the aggregate amount of the company's non-local source income.

Branch or agency income and gains

- 6.—**(1) The amount of any branch or agency income and gains as mentioned in regulation 5(3) (e) is—
- (a) where the conditions specified in paragraph (2) are satisfied with respect to the branch or agency for the accounting period concerned, the amount (being not more than 10 per cent. of the net amount of the profits of that branch or agency for that period) by reference to which the condition specified in sub-paragraph (d) of that paragraph is satisfied by that branch or agency;
 - (b) where the conditions specified in paragraph (2) are not satisfied with respect to the branch or agency for the accounting period concerned, the net amount or, where paragraph (3) applies, the gross amount of the branch or agency income and gains for that accounting period.
- (2) The conditions specified in this paragraph are that—
- (a) the branch or agency is situated in a territory specified in Part I or in Part II of Schedule 1 or, as the case may be, in Part I or in Part II of Schedule 2, and where the territory is one specified in Part II of Schedule 1 or in Part II of Schedule 2, at no time during the accounting period—
 - (i) is entitled to any tax exemption, tax reduction or other benefit, or
 - (ii) falls within any condition,

- specified in column 2 of that Part opposite the specification of that territory;
- (b) the profits of the branch or agency are within the charge to tax of that territory;
 - (c) the profits attributed to the branch or agency for tax purposes in that territory are those which it might be expected to make if it were a distinct and separate enterprise from the company of which it is a branch or agency, engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the company of which it is a branch or agency;
 - (d) not more than 10 per cent. of the net amount of the profits of the branch or agency for the accounting period would, on the assumption that the branch or agency was not a branch or agency of the controlled foreign company but a separate controlled foreign company, be attributable to the aggregate of the gross amounts of any income and gains falling within any of sub-paragraphs (a) to (d) of regulation 5(3) and arising outside the territory in which the branch or agency is situated;
 - (e) amounts falling to be deducted in computing the taxable profits of the branch or agency, being amounts which are paid to, or are in respect of costs incurred by, the head office of the company of which it is a branch or agency, either—
 - (i) are liable to tax, or are disallowed as an expense, in the territory of residence of that company, or
 - (ii) where that company is liable to tax in its territory of residence in respect of the whole of its profits wherever arising, are not allowed as a deduction in computing the taxable profits of that company except where the amount in question is paid by that company to another person.

(3) This paragraph applies to a case where the net amount of the income and gains referred to in paragraph (1) in the accounting period concerned does not exceed an amount which would be equal to the aggregate of the gross amounts of any income and gains falling within any of sub-paragraphs (a) to (d) of regulation 5(3) in that period if branch or agency income and gains fell within those sub-paragraphs.

Interpretation of regulations 5 and 6

7.—(1) In regulation 5(2) “capital profits or losses” means profits or losses arising in relation to chargeable assets.

(2) In regulations 5(3) and 6 references to “branch or agency income” or to “branch or agency income and gains” are references to income and gains that—

- (a) arise in or are derived from any branch or agency of a controlled foreign company, and
- (b) fall within sub-paragraph (e) of regulation 5(3) in the accounting period concerned.

(3) In regulation 5(3)—

- (a) the references to “the gross amount” of any income in sub-paragraphs (a) and (f) are references to the amount of that income before deduction of expenses or reserves;
- (b) the reference to “the gross amount” of any income and gains in sub-paragraph (b) is a reference to the amount of that income and those gains found—
 - (i) after excluding any gain or loss arising on any loan or deposit referred to in that sub-paragraph which is offset by a loss or gain on a contract ancillary to that loan or deposit which would be a qualifying contract if the company were a qualifying company, and
 - (ii) after deducting any exchange losses attributable to the loans or deposits referred to in that sub-paragraph to the extent that those losses have not already been excluded by virtue of paragraph (i) above, but

(iii) before deducting other expenses or reserves;

- (c) the references to “the gross amount” of any income and gains in sub-paragraphs (c) and (d) are references to the amount of that income and those gains found after deducting any exchange losses attributable to the royalties, premiums or rents referred to in those sub-paragraphs but before deducting other expenses or reserves;

and the references to “the gross amounts” in regulation 6(2)(d) and (3) shall be construed accordingly.

(4) In regulation 5(3) references to persons not resident in the territory of residence of a controlled foreign company do not include references to a company not so resident in circumstances where—

- (a) the branch or agency of the company is situated in that territory, and
- (b) the transaction giving rise to the income and gains in question of the controlled foreign company is made with that branch or agency.

(5) In regulation 6(1)(b) the reference to the gross amount of income and gains is a reference to the amount of that income or of those gains before deduction of expenses or reserves.

(6) In regulation 6(1)(b) the reference to “the net amount” of the branch or agency income and gains, and in regulation 6(2)(d) the reference to “the net amount” of the profits of the branch or agency concerned, are references to the amount of that income, or of those profits, after deduction of expenses but before tax, as determined in accordance with a generally accepted method of accounting for profits of branches or profits of agencies of companies.

(7) In paragraph (1) of this regulation a “chargeable asset” is any asset in the case of which one of the following conditions is satisfied, that is to say—

- (a) a gain accruing to the company on a disposal of that asset on or after the date of coming into force of these Regulations would, on the assumption that the company was within the charge to corporation tax, have fallen to be treated in relation to the company as a chargeable gain and would not have been taken into account as a receipt in computing the company’s income or profits or gains or losses for the purposes of the Income Tax Acts;
- (b) a chargeable gain or allowable loss would, on the assumption mentioned in sub-paragraph (a), be deemed to have accrued to the company on any disposal of that asset on or after the date mentioned in that sub-paragraph.

(8) In paragraph (3)(b)(i) of this regulation—

“qualifying company”—

- (a) as respects a contract falling within section 126(1) of the Finance Act 1993, has the meaning given by section 152 of that Act⁽⁵⁾;
- (b) as respects a contract falling within section 147(1) of the Finance Act 1994, has the meaning given by section 154 of that Act;

“qualifying contract” means a contract falling within section 126(1) of the Finance Act 1993 or section 147(1) of the Finance Act 1994, as the case may be, other than a contract which, in the case of branch or agency income or gains which would be income or gains falling within sub-paragraph (b) of regulation 5(3) if branch or agency income and gains fell within that sub-paragraph, is not entered into by the branch or agency concerned.

(5) Section 152 was amended by Part V(3) of Schedule 41 to the Finance Act 1996 (c. 8).

9th December 1998

S C T Matheson
G H Bush
Two of the Commissioners of Inland Revenue

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SCHEDULE 1

Regulations 3, 4 and 6(2)(a)

ACCOUNTING PERIODS BEGINNING BEFORE 9TH JULY 1998

PART I

SPECIFIED TERRITORIES

Australia
Austria
Bangladesh
Bolivia
Botswana
Brazil
Canada
Colombia
Czech Republic
Denmark
Dominican Republic
Falkland Islands
Fiji
Finland
France
Gambia
Germany
Ghana
Honduras
Hungary
Iceland
India
Indonesia
Ivory Coast
Japan
Korea, Republic of
Lesotho
Malawi
Mexico
New Zealand
Nigeria
Norway
Papua New Guinea

Poland
Romania
Senegal
Sierra Leone
Slovak Republic
Solomon Islands
South Africa
Spain
Swaziland
Sweden
Trinidad and Tobago
Turkey
Zambia
Zimbabwe

PART II

SPECIFIED TERRITORIES WITH QUALIFICATIONS

Argentina	Companies obtaining exemption from tax on income from transactions, activities or operations carried on in, or from goods located in, tax free areas in accordance with Law 19640 of 16th May 1972.
Belgium	<p>1. Companies which are regarded as Foreign Sales Corporations in section 922(a) of the United States Internal Revenue Code 1954⁽⁶⁾ and which accordingly qualify for reduced Belgian taxation.</p> <p>2. Companies approved under Royal Decree No. 187 of 30th December 1982 as Co-ordination Centres⁽⁷⁾.</p>
Brunei	Companies qualifying as “pioneer companies” under the Investment Incentives Enactment 1975 ⁽⁸⁾ .
Bulgaria	Any company obtaining a tax benefit under Article 111 of Decree 56 of 9th January 1989 (Free Zone legislation).
Chile	Companies obtaining exemption from tax under Law 16,441 of 1st March 1966 on income from property located in the Department of Isla da

⁽⁶⁾ Section 922(a) was amended by Act. Sec. 801(a) of the Deficit Reduction Act 1984.

⁽⁷⁾ Royal Decree No. 187 was amended by Royal Decrees of 3rd November 1986 and 5th August 1991.

⁽⁸⁾ 1975 c. 97.

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	Pascua or from activities developed in that Department.
China	Companies deriving income in or from the Hong Kong Special Administrative Region and submitting tax returns to the authorities of that Region.
Egypt	Companies which do not fall within the scope of Article 111, Book 2 of Law 157 of 1981 ⁽⁹⁾ because they do not operate in Egypt.
Faroe Islands	Companies deriving interest from Faroese financial institutions from which tax is deducted at source under Law 4 of 26th March 1953.
Greece	<p>1. Companies whose profits are exempt from tax under Article 6(2)(c) of Law 3843/1958⁽¹⁰⁾ (profits from the operation of ships under the Greek flag).</p> <p>2. Companies having profits exempt from company income tax by virtue of Article 25 of Law 25/1975⁽¹¹⁾ or by virtue of Law 89/1967⁽¹²⁾ (profits from shipping and associated activities).</p>
Ireland	<p>1. Companies obtaining relief or exemption from tax under Chapters 1 and 2 of Part 14 of the Taxes Consolidation Act 1997⁽¹³⁾.</p> <p>2. Holding companies having income exempted from tax under section 44 in Chapter 3 of Part 3 of the Taxes Consolidation Act 1997.</p>
Italy	Companies benefiting from paragraphs 12 to 14 of Article 11 of Law 413 of 30th December 1991 (Trieste Free Zone Financial and Insurance Centre).
Kenya	Companies having income exempted from tax under paragraph 11 of Schedule 1 to the Income Tax Act 1973 ⁽¹⁴⁾ .
Luxembourg	1. Companies obtaining any special tax benefit under the Law of 31st July 1929 ⁽¹⁵⁾ , the decree of 17th December 1938 or the Grand Ducal Regulation of 29th July 1977 (holding companies).

⁽⁹⁾ Amended by Law 187 of 1993.

⁽¹⁰⁾ Codified by Law 2238 of 16th September 1994 (Article 103(1)(g)).

⁽¹¹⁾ Substituted by Article 28 of Law 814/1978.

⁽¹²⁾ Supplemented by Law 378/1968.

⁽¹³⁾ 1997 No. 39.

⁽¹⁴⁾ 1973 No. 16.

⁽¹⁵⁾ Amended by Article 21 of the Law of 29th December 1971, Article 5 of the Law of 30th November 1978 and the Grand Ducal Regulation of 24th March 1989.

	<p>2. Any reinsurance company established in Luxembourg requiring authorisation under Article 92 of the Law of 6th December 1991.</p>
Malaysia	<p>1. Companies exempt from tax in accordance with section 54A of the Income Tax Act 1967(16) (shipping).</p> <p>2. Companies subject to tax at 5 per cent. in accordance with sections 60A and 60B(17) of the Income Tax Act 1967 (inward reinsurance and offshore insurance).</p> <p>3. Companies deriving dividends from a company or companies deriving income from one or more of the activities referred to in paragraphs 1 and 2 above.</p> <p>4. Companies obtaining a tax benefit under the Offshore Companies Act (Island of Labuan) 1990(18).</p>
Malta	<p>1. Companies entitled to exemption or relief from tax under section 11(2) of the Income Tax Act 1948(19).</p> <p>2. Companies obtaining exemption from tax under section 86 of the Merchant Shipping Act 1973(20).</p> <p>3. Companies obtaining exemption or relief from tax under section 30 of the Malta International Business Activities Act 1988(21).</p> <p>4. Companies obtaining exemption or relief from tax under section 18 of the Malta Freeports Act 1989(22).</p>
Morocco	Companies receiving a tax benefit under Law 58–90 of 1992 (offshore financial centres).
Netherlands	Companies which are regarded as Foreign Sales Corporations under section 922(a) of the United States Internal Revenue Code 1954.
Pakistan	Companies deriving royalties, commissions or fees which are exempt from tax under

(16) Act 53. Section 54A was inserted by section 13 of the Finance Act 1983 (Act 293).

(17) Section 60A was inserted by section 10 of the Income Tax (Amendment) Act 1980 (Act 471), and section 60B was inserted by section 9 of the Finance Act 1982 (Act 264).

(18) Act 441, amended by the Offshore Companies (Amendment) Act 1992 (A 817), the Labuan Offshore Financial Services Authority (Modification of Offshore Companies Act 1990, Labuan Trust Companies Act 1990, Offshore Banking Act 1990 and Offshore Insurance Act 1990) Order 1996 and the Offshore Companies (Amendment) Act 1997.

(19) 1948 c. 123.

(20) c. 234, amended by section 14 of the Merchant Shipping (Amendment) Act 1986 (Act XXIV of 1986), section 37 of the Merchant Shipping (Amendment) Act 1988 (Act XXXVII of 1988) and section 16 of the Merchant Shipping (Amendment) Act 1990 (Act XXXVII of 1990).

(21) Act XXXIV of 1988, amended by section 13 of the Malta International Business Activities (Amendment) Act 1989 (Act XV of 1989) and section 28 of the Malta International Business Activities (Amendment) Act 1994 (Act XIII of 1994).

(22) Act XXVI of 1989.

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	paragraph 139 in Part I of the second Schedule to the Income Tax Ordinance 1979 (23) .
Philippines	<p>1. Companies authorised under Presidential Decree 1034 of 30th September 1976, or under Presidential Decree 1035 of 30th September 1976, to operate an offshore Banking Unit or a Foreign Currency Deposit Unit as defined in those Decrees.</p> <p>2. Companies receiving interest on deposits with a Foreign Currency Deposit Unit, or other interest subject to the reduced rates of tax under section 27(D) of the National Internal Revenue Code 1997.</p>
Portugal	Companies obtaining tax benefits under Decree Law 502/85 of 30th December 1985 (24) , Articles 41 and 51(g) of the Tax Benefits statute (EBF) approved by Decree Law 215/90 of 31st August 1989 (free zone in Madeira), or Decree Law 501/85 of 28th December 1985 as implemented by Decree Law 63/87 of 5th February 1987 (free zone in the Azores).
Puerto Rico	<p>1. Companies obtaining a tax benefit under section 2(o) of the Industrial Incentive Act 1978(25) (designated service industries).</p> <p>2. Companies obtaining a tax benefit under section 25 of the International Banking Centre Regulatory Act 1989(26) (International Banking Entities).</p>
Singapore	<p>1. Any company obtaining tax concessions under Ministry of Finance Regulations pursuant to section 43A, and sections 43C to 43J, of the Income Tax Act(27).</p> <p>2. Companies obtaining exemption from tax on the income of a shipping enterprise in accordance with section 13A of the Income Tax Act(28).</p> <p>3. Companies obtaining relief from tax in accordance with sections 45 to 55 (international trade incentives), and sections 75 to 84 (warehouse and service incentives), of the</p>

(23) Amended by section 21 of the Finance Act 1995 (Act 1 of 1995).

(24) Revised by Decree Law 165/86 of 26th June 1986.

(25) Act 26/1978.

(26) Act 52/1989.

(27) c. 134, amended by sections 14 to 16 of Act 1/90, section 11 of Act 2/90, sections 14 to 16 of Act 20/91, section 15 of Act 20/92, section 26 of Act 26/93, section 20 of Act 32/95, sections 11, 13 and 19 of Act 1/98, and sections 16 to 19 of Act 31/98.

(28) Amended by section 6 of Act 3/89, section 2 of Act 1/90, section 3 of Act 20/91, section 6 of Act 26/93, sections 6 and 22 of Act 11/94 and section 6 of Act 31/98.

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	Economic Expansion Incentives (Relief from Income Tax) Act(29).
	4. Companies deriving dividends from a company or companies deriving income from one or more of the activities falling within paragraphs 1 to 3 above.
Sri Lanka	Companies obtaining relief or exemption from income tax under any of the following provisions of the Inland Revenue Act 1979(30)– (a) section 8(c)(iv)(31) (foreign currency banking units); (b) sections 10(d) and 15(b) (income derived from approved bank accounts); (c) section 10(e)(32) (interest of newly resident companies); (d) section 15(cc)(33) (services rendered outside Sri Lanka); (e) section 15(p)(34) (re-export of approved products).
Tanzania	Companies relieved or exempted from income tax under section 15(1) or (1A) of the Income Tax Act 1973(35).
Thailand	Companies obtaining a tax benefit under Royal Decree 280 of 22nd September 1992 (offshore banking units).
Tunisia	Companies obtaining exemption from, or reduction of, tax under Law 76–63 of 12th July 1976 (financial and banking institutions dealing with non-residents).
United States	Domestic International Sales Corporations as defined in section 992(a) of the Internal Revenue Code 1954(36).

(29) c. 86, amended by section 4 of Act 36/93 and sections 13 and 14 of Act 1/95.

(30) No. 28 of 1979.

(31) Amended by section 2 of Act 49 of 1991.

(32) Amended by section 5 of Act 8 of 1987.

(33) Amended by section 7 of Law 27 of 1982.

(34) Amended by section 6 of Law 24 of 1980 and section 6 of Law 40 of 1981.

(35) Act 33 of 1973.

(36) Amended by Act. Sec. 812(c)(1) of the Deficit Reduction Act 1984.

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SCHEDULE 2

Regulations 3, 4 and 6(2)(a)

ACCOUNTING PERIODS BEGINNING ON OR AFTER 9TH JULY 1998

PART I

SPECIFIED TERRITORIES

Australia
Austria
Bangladesh
Bolivia
Botswana
Brazil
Bulgaria
Canada
Colombia
Czech Republic
Denmark
Dominican Republic
Falkland Islands
Fiji
Finland
France
Gambia
Germany
Ghana
Honduras
Iceland
India
Indonesia
Ivory Coast
Japan
Korea, Republic of
Lesotho
Malawi
Mexico
New Zealand
Nigeria
Norway
Papua New Guinea

Poland
Romania
Senegal
Sierra Leone
Slovak Republic
Solomon Islands
South Africa
Swaziland
Sweden
Trinidad and Tobago
Turkey
Zambia
Zimbabwe

PART II

SPECIFIED TERRITORIES WITH QUALIFICATIONS

Argentina	Companies obtaining exemption from tax on income from transactions, activities or operations carried on in, or from goods located in, tax free areas in accordance with Law 19640 of 16th May 1972.
Belgium	<ol style="list-style-type: none">1. Companies which are regarded as Foreign Sales Corporations in section 922(a) of the United States Internal Revenue Code 1954 and which accordingly qualify for reduced Belgian taxation.2. Companies approved under Royal Decree No. 187 of 30th December 1982 as Co-ordination Centres.
Brunei	Companies qualifying as “pioneer companies” under the Investment Incentives Enactment 1975.
Chile	Companies obtaining exemption from tax under Law 16,441 of 1st March 1966 on income from property located in the Department of Isla da Pascua or from activities developed in that Department.
China	<ol style="list-style-type: none">1. Companies deriving income in or from the Hong Kong Special Administrative Region and submitting tax returns to the authorities of that Region.

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	<p>2. From 20th December 1999, companies deriving income in or from the Macao Special Administrative Region and submitting tax returns to the authorities of that Region.</p>
Egypt	<p>Companies which do not fall within the scope of Article 111, Book 2 of Law 157 of 1981 because they do not operate in Egypt.</p>
Faroe Islands	<p>Companies deriving interest from Faroese financial institutions from which tax is deducted at source under Law 4 of 26th March 1953.</p>
Greece	<p>1. Companies whose profits are exempt from tax under Article 6(2)(c) of Law 3843/1958 (profits from the operation of ships under the Greek flag).</p> <p>2. Companies having profits exempt from company income tax by virtue of Article 25 of Law 25/1975 or by virtue of Law 89/1967 (profits from shipping and associated activities).</p>
Hungary	<p>Companies benefiting from the reduced rate of tax for extra-territorial companies under section 19(2) of Act LXXXI of 1996 on Corporate Tax and Dividend Tax.</p>
Ireland	<p>1. Companies obtaining relief or exemption from tax under Chapters 1 and 2 of Part 14 of the Taxes Consolidation Act 1997.</p> <p>2. Holding companies having income exempted from tax under section 44 in Chapter 3 of Part 3 of the Taxes Consolidation Act 1997.</p>
Italy	<p>Companies benefiting from paragraphs 12 to 14 of Article 11 of Law 413 of 30th December 1991 (Trieste Free Zone Financial and Insurance Centre).</p>
Kenya	<p>Companies having income exempted from tax under paragraph 11 of Schedule 1 to the Income Tax Act 1973.</p>
Luxembourg	<p>1. Companies obtaining any special tax benefit under the Law of 31st July 1929, the decree of 17th December 1938 or the Grand Ducal Regulation of 29th July 1977 (holding companies).</p> <p>2. Any reinsurance company established in Luxembourg requiring authorisation under Article 92 of the Law of 6th December 1991.</p>
Malaysia	<p>1. Companies exempt from tax in accordance with section 54A of the Income Tax Act 1967 (shipping).</p>

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	<ol style="list-style-type: none">2. Companies subject to tax at 5 per cent. in accordance with sections 60A and 60B of the Income Tax Act 1967 (inward reinsurance and offshore insurance).3. Companies deriving dividends from a company or companies deriving income from one or more of the activities referred to in paragraphs 1 and 2 above.4. Companies obtaining a tax benefit under the Offshore Companies Act (Island of Labuan) 1990.
Malta	<ol style="list-style-type: none">1. Companies entitled to exemption or relief from tax at the discretion of the Minister responsible for finance under section 12(2) of the Income Tax Act 1948.2. Companies obtaining exemption from tax under section 86 of the Merchant Shipping Act 1973.3. Companies obtaining exemption or relief from tax under section 30 of the Malta International Business Activities Act 1988 or section 30 of the Malta Financial Services Centre Act 1988(37).4. Companies obtaining exemption or relief from tax under section 18 of the Malta Freeports Act 1989.
Morocco	Companies receiving a tax benefit under Law 58–90 of 1992 (offshore financial centres).
Netherlands	<ol style="list-style-type: none">1. Companies which are regarded as Foreign Sales Corporations under section 922(a) of the United States Internal Revenue Code 1954.2. A company (“the first company”) receiving interest, rents or royalties in an accounting period directly or indirectly from a Dutch company (“the second company”) which is connected with the first company within the meaning of section 839 of the Taxes Act, in circumstances where–<ol style="list-style-type: none">(a) the second company does not satisfy the income and gains requirement in regulation 5 as respects its accounting period in which the interest, rents or royalties were paid, and(b) the aggregate of the non-local source income of the first company in its

(37) Act XXXIV of 1988, amended by section 13 of the Malta Financial Services (Amendment) Act 1989 (Act XV of 1989) and section 28 of the Malta Financial Services (Amendment) Act 1994 (Act XIII of 1994).

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accounting period in question and the interest, rents and royalties received by it from the second company in that period exceeds whichever is the greater of—

- (i) £50,000 or, where that period is less than twelve months in duration, that amount proportionately reduced, and
- (ii) an amount equal to ten per cent. of its commercially quantified income arising in that period.

Pakistan

Companies deriving royalties, commissions or fees which are exempt from tax under paragraph 139 in Part I of the second Schedule to the Income Tax Ordinance 1979.

Philippines

1. Companies authorised under Presidential Decree 1034 of 30th September 1976, or under Presidential Decree 1035 of 30th September 1976, to operate an offshore Banking Unit or a Foreign Currency Deposit Unit as defined in those Decrees.

2. Companies receiving interest on deposits with a Foreign Currency Deposit Unit, or other interest subject to the reduced rates of tax under section 27(D) of the National Internal Revenue Code 1997.

Portugal

Companies obtaining tax benefits under Decree Law 502/85 of 30th December 1985, Articles 41 and 51(g) of the Tax Benefits statute (EBF) approved by Decree Law 215/90 of 31st August 1989 (free zone in Madeira), or Decree Law 501/85 of 28th December 1985 as implemented by Decree Law 63/87 of 5th February 1987 (free zone in the Azores).

Puerto Rico

1. Companies obtaining a tax benefit under section 2(o) of the Industrial Incentive Act 1978 (designated service industries).

2. Companies obtaining a tax benefit under section 25 of the International Banking Centre Regulatory Act 1989 (International Banking Entities).

Singapore

1. Any company obtaining tax concessions under Ministry of Finance Regulations pursuant to section 43A, and sections 43C to 43K(38), of the Income Tax Act.

(38) Section 43K was amended by section 15 of Act 28/92.

	<p>2. Companies obtaining exemption from tax on the income of a shipping enterprise in accordance with section 13A of the Income Tax Act.</p> <p>3. Companies obtaining relief from tax in accordance with sections 45 to 55 (international trade incentives), and sections 75 to 84 (warehouse and service incentives), of the Economic Expansion Incentives (Relief from Income Tax) Act.</p> <p>4. Companies deriving dividends from a company or companies deriving income from one or more of the activities falling within paragraphs 1 to 3 above.</p>
Spain	<p>1. Companies which are registered in the official register of the Canary Islands Special Zone (Zona Especial Canaria) established under Law 19/1994 and which benefit from the special low tax rate applied to such companies.</p> <p>2. Companies benefiting from the alternative taxation regime for co-ordination centres established by the provincial governments of the Basque Country under laws pursuant to Norma Foral 3/1996 of 26th June 1996, Norma Foral 7/1996 of 4th July 1996, and Norma Foral 24/1996 of 5th July 1996.</p>
Sri Lanka	<p>Companies obtaining relief or exemption from income tax under any of the following provisions of the Inland Revenue Act 1979–</p> <ul style="list-style-type: none">(a) section 8(c)(iv) (foreign currency banking units);(b) sections 10(d) and 15(b) (income derived from approved bank accounts);(c) section 10(e) (interest of newly resident companies);(d) section 15(cc) (services rendered outside Sri Lanka);(e) section 15(p) (re-export of approved products).
Tanzania	<p>Companies relieved or exempted from income tax under section 15(1) or (1A) of the Income Tax Act 1973.</p>
Thailand	<p>Companies obtaining a tax benefit under Royal Decree 280 of 22nd September 1992 (offshore banking units).</p>
Tunisia	<p>Companies obtaining exemption from, or reduction of, tax under Law 76–63 of 12th July 1976 (financial and banking institutions dealing with non-residents).</p>

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United States

Domestic International Sales Corporations
as defined in section 992(a) of the Internal
Revenue Code 1954.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations disapply section 747(3) of the Income and Corporation Taxes Act 1988 (apportionment of a controlled foreign company's profits among persons having an interest in the company) in cases where the controlled foreign company is resident in a territory specified in either of the two Schedules to the Regulations and satisfies one of two conditions. The first condition, which relates to a company which is resident in a territory specified in Part I of either Schedule, is that the company satisfies the income and gains requirement set out in the Regulations. The second condition, which relates to a company which is resident in a territory specified in Part II of either Schedule, is that the company not only satisfies the income and gains requirement but also is not entitled to any tax benefit, or does not satisfy any condition, specified in Part II of the Schedule in relation to the territory concerned. Schedule 1 to the Regulations relates to accounting periods of controlled foreign companies beginning before 9th July 1998, and Schedule 2 relates to accounting periods of controlled foreign companies beginning on or after that date.

The Regulations have effect in relation to any accounting period of a company resident in the United Kingdom ending on or after the day to be appointed for the purposes of corporation tax self-assessment ("an appropriate accounting period"), in circumstances where the United Kingdom company had an interest in a controlled foreign company, within the meaning of Chapter IV of Part XVII of the 1988 Act, at any time during an accounting period of the controlled foreign company ending in an appropriate accounting period of the United Kingdom company. The day to be appointed for the purposes of corporation tax self-assessment is 1st July 1999.

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

Regulation 3 introduces the Schedules which specify the territories in one of which the controlled foreign company is required to be resident and, in Part II of each Schedule, the tax benefit or condition relating to each specified territory.

Regulation 4 summarises the conditions to be satisfied by the controlled foreign company, and regulations 5 and 6 deal with one of those conditions relating to the company's income and gains.

Regulation 7 provides for the interpretation of expressions used in regulations 5 and 6.