

1999 No. 3330

INCOME TAX

**The Double Taxation Relief (Taxes on Income) (Foreign
Interest and Dividends) Regulations 1999**

Made - - - 13th December 1999

Laid before the House of Commons 13th December 1999

Coming into force 3rd January 2000

The Commissioners of Inland Revenue, in exercise of the powers conferred on them by section 798B(4) of the Income and Corporation Taxes Act 1988(a), hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Double Taxation Relief (Taxes on Income) (Foreign Interest and Dividends) Regulations 1999 and shall come into force on 3rd January 2000.

Interpretation

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

“the cost of acquiring the asset”, in relation to a foreign dividend, means—

- (a) the cost of acquiring the right to the dividend (if any), and
- (b) the cost of acquiring the stocks, funds, shares or securities (if any) out of which, or in respect of which, the dividend is paid;

“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;

“interest period”, in relation to a loan, means—

- (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;

“loan agreement” means, in relation to a loan, any agreement in pursuance of which the loan is made;

“qualifying taxpayer” has the meaning given by section 798(4) and (5)(b);

(a) 1988 c. 1: section 798B was inserted by section 105 of the Finance Act 1998 (c. 36).

(b) Section 798 was substituted by section 103(1) of the Finance Act 1998.

“the specified circumstances” means circumstances in which—

- (a) section 798 applies, and
- (b) the amount of the qualifying taxpayer’s financial expenditure in relation to the earning of the foreign interest or foreign dividends in question is not readily ascertainable;

“subsection (3)” means subsection (3) of section 798B.

(2) References in these Regulations to a particular section, without more, are to that section of the Income and Corporation Taxes Act 1988.

Determination of the sum which it is just and reasonable to attribute to the earning of foreign interest or foreign dividends — matters to be taken into account

3.—(1) This regulation specifies, for the purpose of supplementing subsection (3), matters to be taken into account in determining such sum as it is just and reasonable to attribute to the earning of foreign interest or foreign dividends, in the specified circumstances.

(2) Subject to paragraph (6), in relation to a loan there shall be taken into account (whether or not the interest rate payable is determined by reference to rates at which deposits are offered in an interbank market) the interbank bid rates, determined in accordance with regulation 4, which at any time are most appropriate in the circumstances of the loan, having regard to—

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

(3) In relation to foreign interest other than loan interest, paragraph (2), regulation 4 and the definitions of “interbank market”, “the relevant interbank market” and “interest period” shall apply, with the modifications that—

- (a) references to the loan, or to the loan agreement, are replaced with references to the obligations, under which the right to interest arises;
- (b) the reference to the date on which the loan was first made is replaced with a reference to the date on which any of those obligations first came into existence; and
- (c) the reference to principal outstanding is replaced with a reference to any amount other than interest which is owing (whether or not yet due and payable) by the payer of the foreign interest to the qualifying taxpayer.

(4) In relation to foreign dividends, paragraph (2), regulation 4 and the definitions of “interbank market” and “the relevant interbank market” shall apply as if—

- (a) so much of the cost of acquiring the asset as has not been repaid to the qualifying taxpayer represented a loan from the payee of the dividend to the payer thereof and the dividend represented interest on that loan;
- (b) the date on which any of the cost of acquiring the asset was first expended by the qualifying taxpayer were the date on which that loan was made; and
- (c) the interest periods were periods of one year, beginning either—
 - (i) on the date on which the loan is treated as made by sub-paragraph (b), or
 - (ii) on the expiry of the preceding interest period,

except in a case where the loan so treated as made subsists for less than a year, where the interest period shall be equal to the period for which the loan so treated as made subsists.

(5) Where, in relation to a loan it would be impracticable to establish the interbank bid rates, there shall be taken into account such amount as would, when deducted from the foreign interest payable on the loan in the interest period, provide the lender with a margin no greater than would be usual in the case of loans of that description.

(6) Where a qualifying taxpayer establishes to the satisfaction of the inspector that, in relation to all loans, obligations and assets referred to in this regulation (“arrangements”) made or held by him, on which foreign interest or foreign dividends arose in any chargeable period, the sums attributable under paragraphs (2) to (5) would be greater than the total amount of the expenditure incurred in financing those arrangements, there shall be taken into account the best estimate of such total expenditure, and in determining that figure, regard is to be had to the cost to the qualifying taxpayer of obtaining funds for such financing, to the terms on which the arrangements were made and to any other relevant matters.

Determination of interbank bid rates of interest

4. The interbank bid rates referred to in regulation 3(2) 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.

Revocation

5.—(1) The Double Taxation Relief (Taxes on Income) (Foreign Loan Interest) Regulations 1988^(a) are hereby revoked.

(2) Anything whatsoever begun under any regulation revoked by these Regulations may be continued under these Regulations as if begun under these Regulations.

*Nick Montagu
S C T Matheson*

13th December 1999

Two of the Commissioners of Inland Revenue

(a) S.I. 1988/88.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Double Taxation Relief (Taxes on Income) (Foreign Loan Interest) Regulations 1988 (S.I. 1988/88).

Sections 798 and 798B of the Income and Corporation Taxes Act 1988 (1988 c. 1) (as substituted and inserted by sections 103(1) and 105 of the Finance Act 1998) provide that the amount of the credit for foreign tax on foreign interest and foreign dividends allowable against income tax or corporation tax charged on the profits of a trade (other than an insurance business) is to be limited by treating the amount of the foreign interest or foreign dividends as reduced by an amount equal to the taxpayer's financial expenditure in relation to the earning of the interest or dividends. These Regulations specify matters to be taken into account in determining the amount that it is just and reasonable to attribute to the earning of the interest or dividends, in cases where the amount of the taxpayer's financial expenditure ("finance costs") is not readily ascertainable.

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

Regulation 3 specifies, in relation to the finance costs, the rates at which bids are made in an interbank market (e.g. LIBID). Different provision is made for cases where it would be impracticable to establish the interbank bid rates in a particular interbank market, or the taxpayer establishes that in relation to a chargeable period, the sums attributable under these Regulations exceed his actual finance costs (so far as they can be ascertained), where the best estimate of his actual finance costs is to be used.

Regulation 4 provides for the determination of interbank bid rates of interest.

Regulation 5 revokes the Double Taxation Relief (Taxes on Income) (Foreign Loan Interest) Regulations 1988 and contains transitional provision.

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