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STATUTORY INSTRUMENTS

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**2001 No. 1163**

**INCOME TAX**

**The Double Taxation Relief (Surrender of  
Relievable Tax Within a Group) Regulations 2001**

<i>Made</i>	- - - -	<i>23rd March 2001</i>
<i>Laid before the House of Commons</i>	- - - -	<i>26th March 2001</i>
<i>Coming into force</i>	- -	<i>31st March 2001</i>

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by section 806H of the Income and Corporation Taxes Act 1988<sup>(1)</sup>, hereby make the following Regulations:

**Citation, commencement and effect**

1.—(1) These Regulations may be cited as the Double Taxation Relief (Surrender of Relievable Tax Within a Group) Regulations 2001 and shall come into force on 31st March 2001.

(2) These Regulations shall have effect in relation to any claim made on or after 31st March 2001 for the surrender of an amount of EUFT arising in respect of a dividend falling within section 806A(2) that is paid by a company resident outside the United Kingdom to a company resident in the United Kingdom, unless the dividend was paid before that date.

**Interpretation**

2.—(1) In these Regulations—

“EUFT” means eligible unrelieved foreign tax;

“group” shall be construed in accordance with subsection (3)(a) of section 413, read with subsections (4), (5) and (7) of that section;

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

(2) In these Regulations the following expressions have the meanings given by section 413(2)—

“claimant company”

“company”

“group relief”

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(1) 1988 c. 1. Sections 806A to 806J were inserted by paragraph 21 of Schedule 30 to the Finance Act 2000 (c. 17).

“surrendering company”.

(3) In these Regulations references to a section, without more, are to that section of the Taxes Act.

### **Introductory**

3. These Regulations make provision for, and in connection with, allowing a company which is a member of a group to surrender an amount of EUFT arising to it in an accounting period to another company which is a member of the same group.

### **Amount of EUFT available for surrender**

4.—(1) Subject to paragraph (2), the amount of EUFT arising in an accounting period in the cases set out in sections 806A and 806B that may be surrendered by the surrendering company to a claimant company must not exceed the amount (if any) that remains (“the remaining amount”) after the surrendering company has fully utilised in accordance with the relevant provisions of sections 806D to 806G the EUFT arising in that accounting period.

(2) For the purposes of paragraph (1), where the surrendering company chooses not to utilise section 806D(4)(c) or (5)(c) (carry back provision), the remaining amount shall be computed in accordance with that paragraph as if the surrendering company had in fact fully utilised that provision.

(3) Where the surrendering company carries on life assurance business, the policy holders' share of the amount of EUFT attributable to BLAGAB may not be surrendered to another company in the group.

(4) Where—

- (a) an amount of EUFT is surrendered to a claimant company, and
- (b) the claimant company carries on life assurance business,

the amount surrendered may not be set against the policy holders' share of the corporation tax attributable to any single dividend referable to the claimant company's BLAGAB.

(5) In this regulation—

“attributable” means attributable by virtue of section 797(1);

“BLAGAB” means basic life assurance and general annuity business;

“the policy holder's share of the amount of EUFT attributable to BLAGAB” means the amount of EUFT attributable to BLAGAB which would not be the shareholders' share within the meaning of subsection (3) of section 89 of the Finance Act 1989<sup>(2)</sup> if that subsection referred to EUFT and not to income;

“the policy holders' share of the corporation tax attributable to any single dividend referable to the claimant company's BLAGAB” means so much of that tax as would not be the shareholders' share within the meaning of subsection (3) of section 89 of the Finance Act 1989 if that subsection referred to corporation tax and not to income;

“the relevant provisions of sections 806D to 806G” means all provisions of those sections other than section 806D(4)(b) and (5)(b) (carry forward provision);

“single dividend” has the meaning given by section 806E(6).

### **Claiming of EUFT**

5.—(1) The claimant company may claim the whole or part of the amount of EUFT available for surrender in accordance with regulation 4.

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(2) 1989 c. 26.

(2) The amount of EUFT claimed by the claimant company may be utilised by the claimant company in accordance with the provisions of sections 806D to 806G.

#### **Accounting periods of surrendering company and claimant company**

**6.—(1)** The surrendering company and the claimant company must be members of the same group throughout the accounting period of the surrendering company in which the amount of EUFT available for surrender arises.

(2) Where the accounting period of the surrendering company in which the amount of EUFT available for surrender arises and the accounting period of the claimant company are not coterminous—

- (a) the amount of EUFT arising in that accounting period of the surrendering company which is surrendered to the claimant company in accordance with regulations 4 and 5 shall be treated as if it arose on a dividend received by the claimant company, and
- (b) that dividend shall be treated as arising in that one of the claimant company's accounting periods in which falls the last day of the accounting period of the surrendering company in which the amount of EUFT surrendered arises.

#### **Calculation of Schedule D Case V income when EUFT claimed**

**7.** An amount of EUFT that is utilised by the claimant company in accordance with the provisions of sections 806D to 806G shall not be taken into account as underlying tax under section 795(2)(b) in computing the amount of income of the claimant company.

#### **Form of claim and withdrawal of claim**

**8.—(1)** The like provisions as those contained in Part VIII of Schedule 18 to the Finance Act 1998<sup>(3)</sup> (“Schedule 18”) and listed below shall have effect, with necessary modifications, in relation to claims for amounts of EUFT available for surrender as they have effect in relation to claims for group relief.

(2) Those provisions of Schedule 18 are paragraphs 67, 68<sup>(4)</sup>, 70(1), (3) and (4), 71, 72(1) and (4), 73, 75<sup>(5)</sup>, 75A<sup>(6)</sup> and 76<sup>(7)</sup>.

#### **Time limit for claims**

**9.—(1)** A claim for the whole or part of the amount of the EUFT available for surrender in an accounting period of the surrendering company may only be made or withdrawn before the expiration of—

- (a) six years after the expiration of that accounting period or, if later,
- (b) one year after the end of the accounting period in which the foreign tax in question is paid.

(2) The time limits otherwise applicable to amendment of a company tax return under the Corporation Tax Acts do not apply to an amendment to the extent that it makes or withdraws a claim for the surrender of an amount of EUFT in accordance with these Regulations within the time allowed under paragraph (1).

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(3) 1998 c. 36.

(4) Paragraph 68 was amended by paragraph 11 of Schedule 27 to the Finance Act 2000.

(5) Paragraph 75 was amended by section 92(2) of the Finance Act 1999 (c. 16).

(6) Paragraph 75A was inserted by section 92(3) of the Finance Act 1999.

(7) Paragraph 76 was amended by section 92(4) of the Finance Act 1999.

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

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### Miscellaneous provisions

**10.**—(1) The like provisions as those contained in Chapter IV of Part X of the Taxes Act (“Chapter IV”) and listed below shall have effect, with necessary modifications, in relation to claims for amounts of EUFT available for surrender as they have effect in relation to claims for group relief.

(2) Those provisions of Chapter IV are sections 402(1), (2), (5) and (6), 404(8), 410(1), (4) and (5) to (7)(9) and 411(1).

23rd March 2001

*Tim Flesher*  
*Michael Johns*  
Two of the Commissioners of Inland Revenue

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(8) Section 404 was amended by paragraph 21 of Schedule 14 to the Finance Act 1996 and paragraph 37 of Schedule 5 to the Finance Act 1998.

(9) Section 410(5) was amended by section 68 of the Finance Act 1997 (c. 16).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the surrender of eligible unrelieved foreign tax (“EUFT”) by one company in a group to another.

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

Regulation 3 introduces regulations 4 to 10.

Regulation 4 provides for the amount of EUFT that may be surrendered.

Regulation 5 provides for the claiming and utilisation of EUFT by the claimant company.

Regulation 6 provides that the surrendering company and the claimant company must be members of the same group throughout the accounting period of the surrendering company in which the EUFT available for surrender arises, and also provides for the case where the accounting periods of the surrendering company and the claimant company are not coterminous.

Regulation 7 provides that EUFT utilised by the claimant company shall not be taken into account as underlying tax under section 795(2) of the Income and Corporation Taxes Act 1988 (“the Taxes Act”) in determining the amount of income of the claimant company taxable under Case V of Schedule D.

Regulation 8 provides for the form of claim for EUFT and mirrors certain provisions in Part VIII of Schedule 18 to the Finance Act 1998 (claims for group relief).

Regulation 9 provides for time limits for the making or withdrawal of claims for EUFT.

Regulation 10 makes miscellaneous provision for EUFT relief by mirroring certain group relief provisions in Chapter IV of Part X of the Taxes Act.