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STATUTORY INSTRUMENTS

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**2004 No. 2622**

**INCOME TAX**

**The Exemption From Tax For Certain  
Interest Payments Regulations 2004**

<i>Made</i>	- - - -	<i>8th October 2004</i>
<i>Laid before the House of Commons</i>	- - - -	<i>11th October 2004</i>
<i>Coming into force</i>	- -	<i>1st November 2004</i>

The Board, in exercise of the powers conferred upon them by section 100 of the Finance Act 2004<sup>(1)</sup> hereby make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Exemption From Tax For Certain Interest Payments Regulations 2004 and shall come into force on 1st November 2004.

**Interpretation**

2. In these Regulations—

“the Act” means the Finance Act 2004;

“the Board” means the Commissioners of Inland Revenue;

“a company in Condition 1” means a company in Condition 1 in section 98(2) of the Act;

“a company in Condition 2” means a company in Condition 2 in section 98(3) of the Act;

“an exemption notice” is a notice issued by the Board under section 98(5) of the Act;

**Request for and issue of an exemption notice and notification of refusal**

3.—(1) An exemption notice may be issued only on the request of an officer of a company in Condition 2 or its appointed agent.

(2) On receipt of a request under paragraph (1) the Board must determine whether to issue an exemption notice within three months of receipt of the request and the certificate.

(3) An exemption notice must be given to the person requesting the issue of the notice and the company in Condition 1.

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(1) 2004 c. 12.

(4) The Board must notify in writing the person requesting the issue of the notice of a refusal to issue a notice specifying the date of the refusal and the reasons for the refusal.

#### **Information to be provided in the certificate**

4.—(1) A person requesting the issue of an exemption notice must provide a certificate certifying that Conditions 1 to 3 in section 98 of the Act are satisfied and that section 104 of the Act (anti-avoidance) does not apply.

(2) For the purposes of paragraph (1), the certificate must provide—

- (a) proof of the residence for tax purposes of the company in Condition 2 and, where necessary, the existence of a permanent establishment;
- (b) information as to the beneficial entitlement of the company in Condition 2 to the income in respect of which the payment is made;
- (c) details of the United Kingdom corporation tax or tax corresponding to that tax to which the company in Condition 2 is subject;
- (d) information establishing that the company in Condition 1 and the company in Condition 2 are 25% associates within section 99(4) of the Act; and
- (e) a copy of the loan agreement or other document providing the legal justification for the interest payment.

#### **Special relationship**

5. If section 103 of the Act (special relationship) applies or may apply to a payment of interest, an exemption notice may specify—

- (a) the amount of the payment, or
- (b) the method to be used for determining the amount of the payment

in relation to which the notice has effect.

#### **Requirements where Conditions for exemption cease to be satisfied**

6.—(1) If the person who has requested the issue of an exemption notice becomes aware that any of Conditions 1 to 3 in section 98 of the Act has ceased to be satisfied he must as soon as possible notify the Board and the company in Condition 1.

(2) If the company in Condition 1 becomes aware that any of Conditions 1 to 3 in section 98 of the Act has ceased to be satisfied it must as soon as possible notify the Board.

(3) An exemption notice becomes ineffective if the company in Condition 1—

- (a) receives notice under paragraph (1), or
- (b) becomes aware that any of Conditions 1 to 3 in section 98 of the Act has ceased to be satisfied.

#### **Cancellation of exemption notice**

7. If—

- (a) the Board receives notice under regulation 6,
- (b) it appears to the Board that any of Conditions 1 to 3 in section 98 of the Act has ceased to be satisfied, or
- (c) it appears to the Board that section 104 of the Act (anti-avoidance) applies,

the Board may cancel the exemption notice by notice in writing to the person who requested the issue of the exemption notice and the company in Condition 1.

### **Recovery of tax not deducted**

**8.—(1)** If after an exemption notice has been issued, it is discovered that any of Conditions 1 to 3 in section 98 of the Act was not satisfied in the case of a payment of interest and tax deductible from the payment has not been deducted, that tax may be recovered—

- (a) by assessment on the company in Condition 2 under Case VI of Schedule D, or
- (b) if a direction to that effect is given by the Board, by deduction from subsequent payments by the company in Condition 1.

(2) Any tax deducted in accordance with paragraph (1)(b) shall be treated as tax deductible under section 349 of the Income and Corporation Taxes Act 1988(2) in respect of the payment from which it is deducted.

### **Appeals against refusal to issue an exemption notice or cancellation of an exemption notice**

**9.—(1)** An officer of a company in Condition 2 or its appointed agent may appeal to the Special Commissioners against a refusal to issue an exemption notice or the cancellation of an exemption notice.

(2) An appeal under this regulation must be by notice in writing to the Board within 30 days of the date of notification of the refusal under regulation 3 or the cancellation under regulation 7.

(3) The grounds of appeal are

- (a) that Conditions 1 to 3 in section 98 of the Act are satisfied, and
- (b) section 104 of the Act (anti-avoidance) does not apply.

(4) If the Special Commissioners allow the appeal, they may also—

- (a) in an appeal against a refusal to issue an exemption notice, direct that the Board issue an exemption notice within 14 days of its decision, or
- (b) in an appeal against the cancellation of an exemption notice, direct that the cancellation was ineffective.

(5) The decision of the Special Commissioners shall be final.

*Dave Hartnett*

*Helen Ghosh*

8th October 2004

Two of the Commissioners of Inland Revenue

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(2) 1988 c. 1; section 349 has been relevantly amended by Part IV of Schedule 14 to the Finance Act 1988 (c. 39), paragraph 10 of Schedule 5 to the Finance Act 1990 (c. 29), paragraph 1(1), (2) and (4) of Schedule 11 to the Finance Act 1991 (c. 31), paragraphs 2 and 6 of Schedule 8 to the Finance (No. 2) Act 1992 (c. 48), section 59 of the Finance Act 1993 (c. 34), paragraph 18 of Schedule 14, paragraphs 3, 4 and 8(7) of Schedule 37 and paragraph 6(1), (2)(e) and (7) of Schedule 38 to the Finance Act 1996 (c. 8), section 78 of the Finance Act 1997 (c. 16), sections 111(2), 122(2), (3) and (5) and 156 of and Part II (17) of Schedule 40 to the Finance Act 2000 (c. 17), section 95 of the Finance Act 2002 (c. 23) and section 202 of the Finance Act 2003 (c. 14).

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## EXPLANATORY NOTE

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

These Regulations make provisions in relation to the issue of exemption notices by the Board of Inland Revenue permitting payments of interest to be made without deduction of tax under section 349 of the Income and Corporation Taxes Act 1988 (c. 1) pursuant to sections 97 to 106 of the Finance Act 2004 (c. 12) which implements the provisions of Council Directive 2003/49/EC of 3rd June 2003.

Regulation 1 provides for citation and commencement.

Regulation 2 is an interpretation provision.

Regulation 3 makes provision for a request for and issue of an exemption notice.

Regulation 4 specifies the information to be provided in the certificate which must accompany a request for an exemption notice.

Regulation 5 makes provision for the exemption notice to specify the amount of the payment or the method to be used to determine the amount of the payment where section 103 (special relationship) of the Finance Act 2004 applies.

Regulation 6 imposes notification requirements if the conditions for exemption cease to be satisfied and provides for the exemption notice to become ineffective.

Regulation 7 makes provision for the cancellation of an exemption notice.

Regulation 8 makes provision for the recovery of tax where after the issue of an exemption notice it is discovered that the conditions for the exemption were not satisfied so tax was deductible from a payment of interest but has not been deducted.

Regulation 9 provides for appeals against refusals to grant exemption notices and cancellation of exemption notices.

These Regulations do not impose new costs on business.