
STATUTORY INSTRUMENTS

2009 No. 2192

TAXES

**The International Movement of Capital
(Required Information) Regulations 2009**

<i>Made</i>	- - - -	<i>10th August 2009</i>
<i>Laid before the House of Commons</i>	- - - -	<i>11th August 2009</i>
<i>Coming into force</i>	- -	<i>1st September 2009</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 37 of, and paragraphs 4(2), 6(4), 8(4), 9(1)(e) and 14(2) of Schedule 17 to the Finance Act 2009⁽¹⁾.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the International Movement of Capital (Required Information) Regulations 2009 and shall come into force on 1st September 2009.

(2) These Regulations shall have effect in relation to events taking place and transactions carried out on or after 1st July 2009.

Interpretation

2.—(1) In these Regulations—

“group company” means any company which is resident in the United Kingdom and which would be deemed to be a member of the group of companies which includes the reporting body for the purposes of Chapter IV of Part X of the Income and Corporation Taxes Act 1988⁽²⁾ if in section 413(3) of that Act the words “51 per cent” were substituted for the words “75 per cent”;

“ICTA” means the Income and Corporation Taxes Act 1988;

“redeemable”, in relation to shares, means that the shares satisfy one or both of the following conditions—

- (a) that, by virtue of the terms of their issue or the exercise of a right by any person or the existence of any arrangements, they are liable to be redeemed, cancelled or repaid, in whole or in part;

(1) 2009 c.10
(2) 1988 c.1

- (b) that, by virtue of any material arrangements, the holder has a right to require another person to acquire the shares or is obliged in any circumstances to dispose of them or another person has a right or is in any circumstances obliged to acquire them;

and arrangements are material arrangements if the company which issued the shares or a company connected with that company is a party to the arrangements;

“Schedule 17” means Schedule 17 (international movement of capital) to the Finance Act 2009.

(2) For the purposes of these Regulations, whether a person is connected with another shall be determined as it would in accordance with the provisions of subsections (2) to (8) of section 839 (connected persons) of ICTA(3) if the words “paragraph 12 of Schedule 17 to the Finance Act 2009” were substituted for the words “section 416” in the definition of “control” in subsection (8).

(3) In these Regulations, references to a reporting body include a body corporate which would be a reporting body if it had not entered into an arrangement under paragraph 6 of Schedule 17.

Information

3.—(1) Paragraphs (2) and (3) specify the information (in this regulation referred to as “the required information”) to be contained in the report which is required to be made to an officer of Revenue and Customs under paragraph 4(1) of Schedule 17.

(2) The required information as it relates to a foreign subsidiary connected with the event or transaction is—

- (a) its name, and
- (b) the territory from the laws of which it derives its status as a body corporate.

(3) The required information as it relates to an event or transaction is a full description of the event or transaction (and, in the case of a transaction, a full description of all the steps taken in the course of the transaction) and includes in particular—

- (a) the date on which the event took place or the transaction was carried out,
- (b) for a transaction, the name of each party to it,
- (c) the reason for the event or transaction, and
- (d) an estimate of the effect of the event or transaction on the liability to tax in the United Kingdom of the reporting body and of any group company.

Value of the event or transaction

4.—(1) The value of an event or transaction is to be determined for the purposes of paragraph 8 of Schedule 17 in accordance with this regulation.

(2) The value of an issue or transfer of shares or debentures is the market value of the shares or debentures.

(3) The value of an event or transaction which results in a foreign subsidiary becoming, or ceasing to be, a controlling partner in a partnership is the market value of the share of the subsidiary in the assets of the partnership immediately after it becomes a controlling partner or, as the case may be, immediately before it ceases to be a controlling partner.

(4) For the purposes of paragraphs (2) and (3), the value of an event or transaction that is one of a series is the aggregate of the value of all the events and transactions in the series.

(3) Section 839 was amended by section 74 of, and paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4); regulations 47 and 100 of SI 2005/3229; section 882 of, and paragraphs 1 and 341 to the Income Tax (Trading and Other Income) Act 2005 (c. 5); section 89 of, and paragraphs 7 and 25 of Schedule 13 to the Finance Act 2006 (c. 25); section 1027 of, and paragraphs 1 and 223 of Schedule 1 to the Income Tax Act 2007 (c. 3).

Excluded transactions

- 5.—(1) A transaction is excluded for the purposes of Schedule 17 if—
- (a) it is a transaction within paragraph 8(2)(a) to (c) of Schedule 17 that is entered into pursuant to cash pooling arrangements in respect of which the conditions specified in paragraph (2) have been met; or
 - (b) it is described in one of the paragraphs in the Schedule (excluded transactions) to these Regulations and meets such conditions (if any) as are specified there.
- (2) The conditions mentioned in paragraph (1)(a) are that before the transaction takes place—
- (a) the parties to the cash pooling arrangements notify an officer of Revenue and Customs in writing of the terms of the arrangements;
 - (b) an officer of Revenue and Customs gives notice in writing to the parties that transactions entered into pursuant to the cash pooling arrangements after the date of the notice will be excluded transactions for the purposes of Schedule 17.
- (3) The Schedule (excluded transactions) to these Regulations has effect.

Nomination arrangements

- 6.—(1) This regulation contains provision about an arrangement under paragraph 6 of Schedule 17.
- (2) The parties to an arrangement must give notice to an officer of Revenue and Customs within 28 days of entering into it.
- (3) The notice must be in writing and signed by all the parties to the arrangement.
- (4) The notice must state—
- (a) the name of each party,
 - (b) the tax reference of each party, and
 - (c) which party is the nominated reporting body.
- (5) The parties to an arrangement are treated as having withdrawn from it if they fail to give notice in accordance with paragraphs (2) to (4).
- (6) A party to an arrangement is treated as having withdrawn from it if that party ceases to be controlled by the foreign parent.
- (7) A party which withdraws from or is treated as having withdrawn from an arrangement must give notice in writing of that fact to an officer of Revenue and Customs and to any other party to the arrangement within 28 days of the date of withdrawal or, as the case may be, the date on which it ceases to be controlled by the foreign parent.

10th August 2009

Dave Hartnett
Bernadette Kenny
Two of the Commissioners for Her Majesty's
Revenue and Customs

SCHEDULE

Regulation 5(1)(b) and (3)

EXCLUDED TRANSACTIONS

1. The following transactions are excluded transactions mentioned in regulation 5(1)(b).
- 2.—(1) The first transaction is the issue of shares by the foreign subsidiary to the reporting body or to a group company.
 - (2) The conditions are that the issue—
 - (a) is of shares that are not redeemable; and
 - (b) is either—
 - (i) at market value and for consideration paid in cash to the foreign subsidiary, or
 - (ii) in or towards payment for any business undertaking or property acquired by the foreign subsidiary at market value.
- 3.—(1) The second transaction is the issue of shares by the foreign subsidiary to a person not connected with the reporting body.
 - (2) The conditions are—
 - (a) that the issue—
 - (i) is at market value and for consideration paid to the foreign subsidiary, and
 - (ii) is not to a nominee or trustee for a person who is connected with the reporting body;
 - (b) that no arrangements exist as a consequence of which the reporting body or a person connected with the reporting body, or a nominee or trustee for that person or the reporting body, is or may become entitled to the shares so issued or to any of them or to any interest in them or in any of them.
- 4.—(1) The third transaction is the issue of shares by the foreign subsidiary to all persons who are its shareholders at the time of the issue.
 - (2) The conditions are that the issue —
 - (a) is in respect of and in proportion to the shares held by the shareholders in the foreign subsidiary at the time of the issue; and
 - (b) either—
 - (i) is of shares that are not redeemable, or
 - (ii) where no shares are issued to a company which is resident in the United Kingdom or to a nominee or trustee for such a company, is at market value for consideration paid in cash to the foreign subsidiary.
- 5.—(1) The fourth transaction is the issue of debentures by the foreign subsidiary to the reporting body or to a group company.
 - (2) The condition is that the circumstances specified in sub-paragraph (3) are not associated with or present in connection with the issue of the debentures.
 - (3) The circumstances are that a loan, whether or not of the same amount as that secured by the debentures, is made by a company which is not resident in the United Kingdom to a company which is resident in the United Kingdom.
- 6.—(1) The fifth transaction is the issue of debentures by the foreign subsidiary to persons not connected with the reporting body.

(2) The conditions are—

(a) that the issue—

(i) is at market value and for consideration paid to the foreign subsidiary, and

(ii) is not to a nominee or trustee for a person who is connected with the reporting body;

(b) that no arrangements exist as a consequence of which the reporting body or a person connected with the reporting body, or a nominee or trustee for that person or the reporting body, is or may become entitled to the debentures so issued or to any of them or to any interest in them or in any of them.

7.—(1) The sixth transaction is the transfer by the reporting body or a company (whether or not it is resident in the United Kingdom) of shares or debentures of the foreign subsidiary to a person not connected with the reporting body.

(2) The conditions are—

(a) that the transfer—

(i) is at market value for consideration paid to the transferor company, and

(ii) is not to a nominee or trustee for a person who is connected with the reporting body;

(b) that no arrangements exist as a consequence of which—

(i) the reporting body, or

(ii) a nominee or trustee for the reporting body, or

(iii) a person connected with the reporting body, or

(iv) a nominee or trustee for a person connected with the reporting body,

is or may become entitled to the shares or debentures transferred or to any of them or to any interest in them or in any of them.

8. The seventh transaction is a transfer by the reporting body of shares or debentures of the foreign subsidiary to a group company.

9.—(1) The eighth transaction is a transfer within sub-paragraph (2) to the reporting body or a group company.

(2) A transfer is within this sub-paragraph if it—

(a) is not by the reporting body,

(b) is of shares or debentures of a foreign subsidiary in which the reporting body has an interest, and

(c) is permitted or caused by the reporting body.

10. The ninth transaction consists in the reporting body or a group company giving security over the shares of a foreign subsidiary in connection with borrowing money from a lender who is unconnected to the reporting body or the group company.

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 should be read with Schedule 17 of the Finance Act 2009 (chapter 10). Paragraph 4 of Schedule 17 imposes a reporting requirement in relation to certain events and transactions involving subsidiary companies which are not resident in the United Kingdom (see paragraph 8(1) and (2) of Schedule 17). The requirement is imposed on UK bodies corporate controlling one or more bodies corporate that are not resident in the United Kingdom.

Regulation 1 provides for the citation, commencement and effect of these regulations. In accordance with the power conferred by paragraph 14(2) of Schedule 17, the regulations have effect in relation to events which take place on or after 1st July 2009 and to transactions which are carried out on or after that date. The earliest date by which a report is required is 1st April 2010 (see paragraph 14(1) of Schedule 17).

Regulation 2 contains interpretative provisions.

Regulation 3 deals with the information which a reporting body is required to provide to an officer of Revenue and Customs. Regulation 3(1) introduces the specific reporting regulations.

Regulation 3(2) provides that the information required as it relates to a foreign subsidiary is its name and the territory from which it derives its status as a body corporate.

Regulation 3(3) provides that the information required in relation to each event, each transaction and each step taken in the course of a transaction is a full description including in particular the date, the names of the parties, the reasons for it, and an estimate of its effect on liability to United Kingdom tax.

Regulation 4 deals with determining the value of an event or transaction. Regulation 4(1) introduces the specific valuation regulations.

Regulation 4(2) provides that the value of an issue or transfer of shares or debentures is their market value.

Regulation 4(3) provides that the value of an event or transaction which results in a foreign subsidiary becoming, or ceasing to be, a controlling partner in a partnership is the market value of the share of the subsidiary in the assets of the partnership immediately after it becomes a controlling partner or, as the case may be, immediately before it ceases to be a controlling partner.

Regulation 4(4) provides for the aggregation of the value of all the events and transactions in a series.

Regulation 5(1)(a) and (b) exclude certain transactions from the reporting requirement. The exclusions are in addition to those specified in paragraph 9(1)(a) to (d) of Schedule 17 to the Finance Act 2009. Regulation 5(1)(a) excludes transactions pursuant to cash pooling arrangements where the conditions in paragraph (2) have been met.

Regulation 5(2) provides that, before the transaction takes place, the parties to the cash pooling arrangements must notify an officer of Revenue and Customs in writing of the terms of the arrangements and written notice must have been given to the parties by an officer of Revenue and Customs that transactions entered into pursuant to the arrangements after the date of the notice will be excluded transactions for the purposes of the Schedule.

Regulation 5(1)(b) provides that transactions described in the Schedule to the Regulations (the Schedule is introduced by paragraph (3) to regulation 5) and meeting any specified conditions are excluded from the reporting requirement.

Paragraph 2 of the Schedule excludes the issue of shares by the foreign subsidiary to the reporting body or to another company belonging to the same group as the reporting body. The shares must not be redeemable and the issue must be made either at market value and for consideration paid in cash to the foreign subsidiary or made in or towards payment for any business undertaking or property acquired by the foreign subsidiary at market value.

Paragraph 3 of the Schedule excludes the issue of shares by the foreign subsidiary to a person not connected with the reporting body. The issue must be at market value and for consideration paid to the foreign subsidiary and must not be an issue to a nominee or trustee for a person who is connected with the reporting body. There must not be any arrangements by which the reporting body, a person connected with the reporting body, or a nominee or trustee for that person or the reporting body is or may become entitled to the shares or any interest in any of them.

Paragraph 4 of the Schedule excludes the issue of shares by the foreign subsidiary to all its shareholders. The shares must be issued in respect of and in proportion to the shares already held at the time of the issue. The issued shares must not be redeemable or, if no shares are issued to a company resident in the United Kingdom or to a nominee or trustee for such a company, the shares must be issued at market value and for consideration paid in cash to the foreign subsidiary.

Paragraph 5 of the Schedule excludes the issue of debentures by the foreign subsidiary to the reporting body or a company in the same group as the reporting body. There must not be a loan associated with or present in connection with the issue. This applies to any loan which is made by a company not resident in the United Kingdom to a company which is resident in the United Kingdom. It does not matter whether or not the loan is of the same amount as the amount secured by the debentures.

Paragraph 6 of the Schedule excludes the issue of debentures by the foreign subsidiary to persons who are not connected with the reporting body. The debentures must be issued at market value and for consideration paid to the foreign subsidiary and must not be issued to a nominee or trustee for a person who is connected with the reporting body. There must not be any arrangements by which the reporting body, a person connected with the reporting body, or a nominee or trustee for that person or the reporting body is or may become entitled to the debentures or any interest in them.

Paragraph 7 of the Schedule excludes certain transfers by the reporting body or any company (whether or not it is resident in the United Kingdom) of shares or debentures of the foreign subsidiary. The exclusion applies where the transfer is to a person not connected with the reporting body. The transfer must be at market value and for consideration paid to the transferor and must not be to a nominee or trustee for a person who is connected with the reporting body. There must not be any arrangements by which the reporting body, or a nominee or trustee for the reporting body, or a person connected with the reporting body, or a nominee or trustee for a person connected with the reporting body is or may become entitled to the shares or debentures or any interest in them.

Paragraph 8 of the Schedule excludes transfers by the reporting body of shares or debentures of the foreign subsidiary to a company in the same group as the reporting body.

Paragraph 9 of the Schedule excludes transfers other than by the reporting body of shares or debentures of a foreign subsidiary in which the reporting body has an interest. The transfers must be permitted or caused by the reporting body and must be to the reporting body or to a company in the same group as the reporting body.

Paragraph 10 of the Schedule excludes transactions whereby the reporting body or a company in the same group as the reporting body gives security over the shares of a foreign subsidiary. The security must be given in connection with the borrowing of money and the lender must not be connected to the reporting body or to a company in the same group as the reporting body.

Regulation 6 contains provision about making an arrangement under paragraph 6 of Schedule 17 to the Finance Act 2009. An arrangement under paragraph 6 permits two or more United Kingdom corporate parents controlled by the same foreign corporate parent to nominate one of those United Kingdom corporate parents to exercise the functions conferred by Schedule 17 on a reporting body.

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Regulation 6(2) requires the parties to give notice of the arrangement to an officer of Revenue and Customs within 28 days of entering into it.

Regulation 6(3) requires the notice to be in writing and signed by all the parties to the arrangement.

Regulation 6(4) requires the notice to state the name and tax reference of each party and to state which of them is the nominated reporting body.

Regulation 6(5) provides that the parties to an arrangement are treated as having withdrawn from it if they do not give notice to an officer of Revenue and Customs in accordance with paragraphs (2) to (4).

Regulation 6(6) provides that if a party to an arrangement ceases to be controlled by the foreign parent, that party is treated as having withdrawn from the arrangement.

Regulation 6(7) requires that a party which withdraws from or is treated as withdrawing from an arrangement must give notice to an officer of Revenue and Customs and to any other party to the arrangement of that fact within 28 days of the date of withdrawal or the date on which it ceases to be controlled by the foreign parent, as the case may be.

Schedule 17 and the Regulations are included in a package of measures being introduced as part of the Government's review of the taxation of the foreign profits of companies. A full and final impact assessment of the effect which the package as a whole will have on the costs of business and the voluntary sector was published on 22nd April 2009. A copy is available at http://www.hm-treasury.gov.uk/d/Budget2009/bud09_impactassessment_1395.pdf.