
STATUTORY INSTRUMENTS

2011 No. 1787

INCOME TAX

CORPORATION TAX

The Income Tax (Manufactured Overseas Dividends) (Amendment) Regulations 2011

<i>Made</i>	- - - -	<i>20th July 2011</i>
<i>Laid before the House of Commons</i>	- - - -	<i>21st July 2011</i>
<i>Coming into force</i>	- -	<i>11th August 2011</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 585, 586 and 588 of the Income Tax Act 2007⁽¹⁾ and sections 789, 803 and 804 of the Corporation Tax Act 2010⁽²⁾.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Income Tax (Manufactured Overseas Dividends) (Amendment) Regulations 2011 and come into force on 11th August 2011.

(2) These Regulations have effect in relation to manufactured overseas dividends paid or treated as paid on or after that day.

Amendments to the Income Tax (Manufactured Overseas Dividends) Regulations 1993

2. The Income Tax (Manufactured Overseas Dividends) Regulations 1993⁽³⁾ are amended as follows.

Amendment of regulation 2 (interpretation)

3.—(1) In regulation 2 (interpretation), amend paragraph (1) as follows.

(2) After the definition of “collecting agent”⁽⁴⁾ insert—

““foreign permanent establishment payment” means a payment made by a company in the course of a trade carried on through a permanent establishment in a territory outside the United

(1) 2007 c. 3, see section 591 for the definition of “prescribed”.

(2) 2010 c. 4.

(3) S.I. 1993/2004, relevantly amended by S.I. 1996/2643, 1997/988, 2001/403, 2003/2582 and 2007/2487.

(4) The definition of “collecting agent” was substituted by S.I. 1996/2643 and amended by S.I. 2001/403.

Kingdom where section 18A of the Corporation Tax Act 2009⁽⁵⁾ has effect in relation to the company for the accounting period in which the payment is made;

“foreign permanent establishment receipt” means a receipt by a company for the purposes of a trade carried on by the company through a permanent establishment in a territory outside the United Kingdom where section 18A of the Corporation Tax Act 2009 has effect in relation to the company for the accounting period in which the payment is received;”.

(3) For the definition of “United Kingdom recipient”⁽⁶⁾ substitute—

““United Kingdom recipient” has the meaning given in section 918(5) and (5A) of the Income Tax Act 2007⁽⁷⁾.”.

Amendment of regulation 4 (tax treatment of approved manufactured overseas dividends paid to approved United Kingdom intermediaries or approved United Kingdom collecting agents)

4. In regulation 4 (tax treatment of approved manufactured overseas dividends paid to approved United Kingdom intermediaries or approved United Kingdom collecting agents)⁽⁸⁾, in paragraph (2)

- (a) at the end of paragraph (a) omit “and”, and
- (b) at the end of paragraph (b) insert—
 - “, and
 - (c) the receipt of the manufactured overseas dividend by the approved United Kingdom intermediary or approved United Kingdom collecting agent is not a foreign permanent establishment receipt.”.

Amendment of regulation 5 (tax treatment of approved manufactured overseas dividends paid to persons resident outside the United Kingdom)

5. In regulation 5 (tax treatment of approved manufactured overseas dividends paid to persons resident outside the United Kingdom), in paragraph (2)(b)⁽⁹⁾—

- (a) at the end of sub-paragraph (ii) omit “and”, and
- (b) at the end of sub-paragraph (iii) insert—
 - “, and
 - (iv) none of the payments are foreign permanent establishment payments.”.

Amendment of regulation 5A (chains of payments where last payment made to, or for the benefit of, registered pension scheme or is linked solely to pension business)

6.—(1) Amend regulation 5A (chains of payments where last payment made to, or for the benefit of, registered pension scheme or is linked solely to pension business)⁽¹⁰⁾ as follows.

(2) In paragraph (1)(b) for “D” substitute “E”.

(3) After paragraph (5) insert—

“(5A) Condition E is that none of the payments are foreign permanent establishment payments.”.

⁽⁵⁾ Section 18A was inserted by paragraph 4 of Schedule 13 to the Finance Act 2011 (c. 11).

⁽⁶⁾ The definition of “UK recipient” was substituted by [S.I. 2003/2582](#).

⁽⁷⁾ Section 918(5A) was inserted by paragraph 20(4) of Schedule 13 to the Finance Act 2011.

⁽⁸⁾ Paragraph (2) was substituted by [S.I. 1997/988](#) and amended by [S.I. 2003/2582](#).

⁽⁹⁾ Paragraph (2) was amended by [S.I. 2003/2582](#).

⁽¹⁰⁾ Regulation 5A was inserted by [S.I. 2007/2487](#).

Amendment of regulation 7 (disapplication of paragraph 4(3) of Schedule 23A)

7. In regulation 7 (disapplication of paragraph 4(3) of Schedule 23A), in paragraph (2)—
- (a) in sub-paragraph (c) after “the United Kingdom” insert “and receipt of the manufactured overseas dividend by the person beneficially entitled to it would be otherwise than in the course of a trade carried on through a branch or agency in the United Kingdom”, and
 - (b) after sub-paragraph (c) insert—

“(ca) is an approved United Kingdom collecting agent and receipt of the manufactured overseas dividend by the person beneficially entitled to it would be a foreign permanent establishment receipt, or”.

Amendment of regulation 9 (offsetting of tax by overseas dividend manufacturers)

8. In regulation 9 (offsetting of tax by overseas dividend manufacturers), in paragraph (1A)(11)—
- (a) in sub-paragraph (a) at the end insert “otherwise than as foreign permanent establishment receipts”, and
 - (b) in sub-paragraph (b) at the end insert “otherwise than as foreign permanent establishment receipts”.

Amendment of regulation 9A (offsetting of tax by overseas dividend manufacturers who are not United Kingdom intermediaries)

9. In regulation 9A (offsetting of tax by overseas dividend manufacturers who are not United Kingdom intermediaries)(12), in paragraph (1) after “period” in the second place it occurs insert “otherwise than as a foreign permanent establishment receipt”.

Amendment of regulation 10 (matching of dividends and manufactured overseas dividends)

10. In regulation 10 (matching of dividends and manufactured overseas dividends), after paragraph (1) insert—

- “(1A) But the following cannot be matched under paragraph (1)—
- (a) overseas dividends received as foreign permanent establishment receipts,
 - (b) manufactured overseas dividends received as foreign permanent establishment receipts, and
 - (c) manufactured overseas dividends paid as foreign permanent establishment payments.”.

20th July 2011

Angela Watkinson
Jeremy Wright
Two of the Lords Commissioners of Her
Majesty’s Treasury

(11) Paragraph (1A) was inserted by [S.I. 1996/2643](#).

(12) Regulation 9A was inserted by [S.I. 1997/988](#).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Income Tax (Manufactured Overseas Dividends) Regulations 1993 (S.I. 1993/2004) (“the principal Regulations”) to take account of the changes introduced by the Finance Act 2011 to the taxation of foreign permanent establishments of companies resident in the United Kingdom.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 introduces the amendments to the principal Regulations.

Regulation 3 amends regulation 2 (interpretation) of the principal Regulations to insert definitions of “foreign permanent establishment payment” and “foreign permanent establishment receipt”, these are payments and receipts by a company in respect of a trade carried on through a permanent establishment in a territory outside the United Kingdom where section 18A of the Corporation Tax Act 2009 has effect in relation to the company (section 18A of the Corporation Tax Act 2009 was inserted by Schedule 13 to the Finance Act 2011 and provides an exemption for the profits and losses of a foreign permanent establishment of a company resident in the United Kingdom). The statutory references in the definition of “United Kingdom recipient” are also updated.

Regulation 4 amends regulation 4 (tax treatment of approved manufactured overseas dividends paid to approved United Kingdom intermediaries or approved United Kingdom collecting agents) of the principal Regulations so that a manufactured overseas dividend cannot be paid without deduction of an amount on account of income tax under that regulation if the receipt by the approved United Kingdom intermediary or approved United Kingdom collecting agent is a foreign permanent establishment receipt. The approved United Kingdom collecting agent or intermediary will then not need to account for and pay tax under regulation 4 in respect of that receipt.

Regulation 5 amends regulation 5 (tax treatment of approved manufactured overseas dividends paid to persons resident outside the United Kingdom) of the principal Regulations and regulation 6 amends regulation 5A (chains of payments where last payment made to, or for the benefit of, registered pension scheme or is linked solely to pension business) of the principal Regulations so that a chain of payments under those regulations cannot include a foreign permanent establishment payment.

Regulation 7 amends regulation 7 (disapplication of paragraph 4(3) of Schedule 23A) of the principal Regulations so the disapplication of the reverse charge under section 923 of the Income Tax Act 2007 (this was previously paragraph 4(3) of Schedule 23A of the Income and Corporation Taxes Act 1988 (c. 1)) applies where a manufactured overseas dividend is received by an approved United Kingdom collecting agent and the person who is beneficially entitled to the dividend would receive it otherwise than in the course of a trade carried on through a branch or agency in the United Kingdom or as a foreign permanent establishment receipt.

Regulation 8 amends regulation 9 (offsetting of tax by overseas dividend manufacturers) of the principal Regulations and regulation 9 amends regulation 9A (offsetting of tax by overseas dividend manufacturers who are not United Kingdom intermediaries) of the principal Regulations to exclude foreign permanent establishment receipts from the amounts available to be offset in determining a persons liability to tax.

Regulation 10 amends regulation 10 (matching of dividends and manufactured overseas dividends) of the principal Regulations so that foreign permanent establishment receipts and

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foreign permanent establishment payments cannot be matched with other overseas dividends or manufactured overseas dividends.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.