OVERSEAS TRADE CORPORATIONS

1958 No. 392

The Income Tax and Profits Tax (Overseas Trade Corporation) Regulations, 1958

Made - - - -	11*th March*, 1958
Laid before the House of Commons	17*th March*, 1958
Coming into Operation	18*th March*, 1958

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by Section 34 of the Finance Act, 1957(a), hereby make the following Regulations:—

PART I

GENERAL

1. *Citation and Commencement.* These Regulations may be cited as the Income Tax and Profits Tax (Overseas Trade Corporation) Regulations, 1958, and shall come into operation on the eighteenth day of March, 1958.

2. *Interpretation.* In these Regulations expressions have, unless the context otherwise requires, the same meaning as in the Income Tax Acts, and the Interpretation Act, 1889(b), applies to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

PART II

CLAIMS TO QUALIFY AS AN OVERSEAS TRADE CORPORATION

3.—(1) A company may, before the end of any year of assessment, claim, by notice in writing to the Inspector, that it should be treated provisionally as an Overseas Trade Corporation for that year.

(2) If the Commissioners having jurisdiction in the matter are of opinion that a company, whether or not it is a company which has made a provisional claim under paragraph (1) of this Regulation, is likely to qualify as an Overseas Trade Corporation for any year, they shall not make an assessment under Case I of Schedule D for that year on the profits of the trade carried on by the company, but they shall provisionally make such assessments under Case VI as would fall to be made, having regard to the provisions of Section 26 of the Finance Act, 1957, and paragraphs 1, 2 and 3 of the Sixth Schedule to that Act if it were established that the company qualified as an Overseas Trade Corporation for that year and all the provisions in the Income Tax Acts relating to notices of assessment and appeals shall apply in relation to any such provisional assessment.

Provided that the foregoing provisions of this paragraph shall not apply in relation to a company for any year if an election made by the company under subsection (2) of Section 23 of the Finance Act, 1957, or a direction given by the Commissioners of Inland Revenue under subsection (3) of that Section has effect in relation to the company for that year.

(a) 5 & 6 Eliz. 2. c. 49. (b) 52 & 53 Vict. c. 63.

(3) The company may give notice of appeal against any such provisional assessment on the ground that it is not, or will not be, an Overseas Trade Corporation for that year; and if the period for which the company would be required to satisfy the necessary conditions in order to qualify as an Overseas Trade Corporation for that year has not then elapsed the hearing of the appeal shall be postponed until after the end of that period. The General or Special Commissioners, in determining for the purposes of subsection (2) of Section 63 of the Income Tax Act, 1952(a), the amount of tax charged by any such assessment which appears to them not to be in dispute may take into account any tax which in their view would, on the basis that the company did not qualify as an Overseas Trade Corporation for that year, be likely to be due on an assessment made for that year under Case I of Schedule D on the trading profits of the company.

(4) If the Commissioners having jurisdiction in the matter are not satisfied that a company is likely to qualify as an Overseas Trade Corporation for any year, they may, notwithstanding that a notice of claim under paragraph (1) of this Regulation has been received from the company for that year, make an assessment on the company under Case I of Schedule D on the trading profits of the company computed in accordance with the provisions of the Income Tax Acts. The company may give notice of appeal against any such assessment on the ground that it is, or is likely to be, an Overseas Trade Corporation for that year, and if the period for which the company is required to satisfy the necessary conditions in order to qualify as an Overseas Trade Corporation for that year has not then elapsed the hearing of the appeal shall be postponed till after the end of that period. The General or Special Commissioners in determining, for the purposes of subsection (2) of Section 63 of the Income Tax Act, 1952, the amount of tax charged by any such assessment which appears to them not to be in dispute may take into account any tax which in their view would, on the basis that the company qualified as an Overseas Trade Corporation for that year, be likely to be due on assessments made under Case VI of Schedule D in respect of dividends or other amounts distributed or deemed to be distributed out of exempt trading income.

4.—(1) A company may, by giving notice in writing to the Inspector within three months after the end of any year of assessment, or such longer time as the Commissioners of Inland Revenue may allow, claim to be treated as an Overseas Trade Corporation for that year, and such a claim may be made whether or not the company has made a provisional claim under paragraph (1) of Regulation 3 in relation to that year and whether or not it has been provisionally treated as an Overseas Trade Corporation for that year under paragraph (2) of that Regulation.

(2) The Inspector shall, as soon as may be after receipt of such a claim, by notice in writing to the company state whether he is satisfied that the company qualifies as an Overseas Trade Corporation for that year.

(3) If a company is aggrieved by a notice given by the Inspector under paragraph (2) of this Regulation, it may, within 30 days after the date of the notice, give notice of appeal either to the appropriate body of General Commissioners or to the Special Commissioners, according as it may specify, and the provisions of the Income Tax Acts relating to appeals including those relating to the statement of a case for the opinion of the High Court shall apply as though the appeal were an appeal against an assessment.

(4) If the Inspector is not satisfied that a company does not qualify as an Overseas Trade Corporation for any year, and the company is one which

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10.

has not given notice under paragraph (1) of this Regulation and in relation to which no election under subsection (2) of Section 23 of the Finance Act, 1957, and no direction under subsection (3) of that Section has effect for that year, he may give notice in writing to the company that he is not so satisfied and the company may appeal against such a notice as though it were a notice given under paragraph (3) of this Regulation.

(5) The Inspector may, before giving any notice under paragraph (2) or paragraph (4) of this Regulation, by notice in writing require a company to furnish him, within 30 days after the date of the notice or such longer period as may be specified therein, with any information or further information which in his view is, or may be, relevant to the question whether the company qualifies as an Overseas Trade Corporation.

5. Where—

(*a*) the Inspector has given notice under paragraph (2) or paragraph (4) of Regulation 4 as regards any year and no notice of appeal within the time limit has been given ; or

(*b*) the question whether a company qualifies as an Overseas Trade Corporation for any year has been determined either by the Commissioners on appeal either against any notice given under paragraph (3) or paragraph (4) of Regulation 4, or against any assessment, or by the court if a case has been required to be stated, the notice, or the determination of the Commissioners or the court, as the case may be, shall govern the question whether the company qualifies as an Overseas Trade Corporation for that year and all such assessments, additional assessments, reductions or discharges of assessments, or repayments of tax shall be made as are necessary to give effect to the decision or determination.

6.—(1) The fact that a company is, or was, an Overseas Trade Corporation, or has made a claim under Regulation 3 or Regulation 4 to be treated as an Overseas Trade Corporation, or has been assessed on the basis that it is, or was, an Overseas Trade Corporation, shall not relieve it of any obligation imposed on it by the Income Tax Acts as to the making of returns or statements or the furnishing of accounts or other information.

(2) The Inspector may by notice in writing require any company (whether or not it is a company which has made a claim under Regulation 3 or Regulation 4) to furnish him, within 30 days after the date of the notice or such longer period as may be specified therein, with any evidence, information or further information which is, or may be, relevant to the question whether the company qualifies as an Overseas Trade Corporation, and such a requirement may be made whether or not the Inspector has issued a notice under paragraph (2) or paragraph (4) of Regulation 4.

PART III

RETURNS

7.—(1) It shall be the duty of a company which :

(*a*) has in relation to any year given a notice under paragraph (1) of Regulation 3 ; or

(*b*) has for any year been assessed on the basis that it is not an Overseas Trade Corporation for that year, but has appealed against such an assessment on the ground that it is, or is likely to be, an Overseas Trade Corporation for that year ; or

(*c*) has for any year been treated as an Overseas Trade Corporation,

to make a return on the form provided for the purpose by the Commissioners of Inland Revenue of any dividend payable to shareholders during that or any subsequent year or of any grant or loan made during that or any subsequent year and falling within paragraph 1 or paragraph 2 of the Sixth Schedule to the Finance Act, 1957, or of any distribution which under paragraph 3 of that Schedule the company is deemed to have made during that or any subsequent year, so far as such dividend, grant, loan or distribution is to be treated as paid or made out of exempt trading income.

(2) Any such return shall be made within 30 days after the date on which the dividend is due or the grant or loan is made or the distribution is deemed to take place, as the case may be, or such longer time as the Commissioners of Inland Revenue may allow :

Provided that where the duty to make the return first arises after that date, the return shall be made within 30 days after the date on which the duty first arises, or such longer time as the Commissioners of Inland Revenue may allow.

8. The liquidator of a company which is, or has been, an Overseas Trade Corporation shall make a return on the form provided for the purpose by the Commissioners of Inland Revenue of any distribution of the assets of the company to members of the company within 30 days (or such longer time as the Commissioners of Inland Revenue may allow) after the date on which the distribution is made.

PART IV

NOTICES OF ELECTION, ETC., UNDER SECTION 23, FINANCE ACT, 1957

9. A notice of election under subsection (2) of Section 23 of the Finance Act, 1957, or a notice of revocation under subsection (5) of that Section of any such election shall be given to the Inspector in writing within three months after the end of the year of assessment for which it is to have effect or such longer time as the Commissioners of Inland Revenue may allow.

10.—(1) A notice of application for a direction under subsection (3) of Section 23 of the Finance Act, 1957, or a notice requiring the Commissioners of Inland Revenue to withdraw under subsection (5) of that Section any such direction shall be given to the Commissioners of Inland Revenue in writing within three months after the end of the year of assessment for which it is to have effect or such longer time as they may allow.

(2) Where the Commissioners of Inland Revenue have received an application under subsection (3) of Section 23 of the Finance Act, 1957, they shall, unless the case falls within paragraphs (*a*) and (*b*) of that subsection, give a direction within nine months after the end of the first period of twelve months to which it relates.

PART V

PARTICULARS TO BE GIVEN ON DIVIDEND WARRANTS BY A COMPANY WHICH IS, OR HAS BEEN, AN OVERSEAS TRADE CORPORATION

11.—(1) This Regulation applies to a dividend :

(*a*) which is payable by a company that is, or has been, an Overseas Trade Corporation, and the whole or any part of which is in consequence to be treated as paid out of exempt trading income ; or

(*b*) which is payable by a company that has made a claim either under Regulation 3 or under Regulation 4 to be treated as an Overseas Trade

Corporation for any year, or period, and the whole or any part of which dividend would, if the claim were established, fall to be treated as paid out of exempt trading income.

(2) In relation to any dividend to which this Regulation applies, Section 199 of the Income Tax Act, 1952, shall have effect subject to the following modifications:—

(*a*) The statement required by subsection (1) of the said Section 199 shall include a statement that the company is, or has been, or has claimed to be, an Overseas Trade Corporation.

(*b*) The particulars required by that subsection to be shown in such a statement shall be given separately as regards that part of the dividend which under the provisions of Section 26 of the Finance Act, 1957, and the Fifth Schedule to that Act falls to be regarded as paid out of exempt trading income, or would so fall if the company's claim to be treated as an Overseas Trade Corporation were established, and that part (if any) which does not, or would not, fall to be so regarded.

(*c*) Where the rate of foreign tax appropriate to so much of the dividend as falls to be regarded as paid out of the exempt trading income, or would so fall if the company's claim to be treated as an Overseas Trade Corporation were established, exceeds the standard rate of United Kingdom tax deductible from the dividend, the particulars shall include a statement of the rate of foreign tax aforesaid.

Part VI

Method of ascertaining the amount of Credit for Foreign Taxes

12. In this Part of these Regulations the expression "foreign tax" means tax which is payable under the laws of a territory outside the United Kingdom and for which credit may be allowed under Part XIII of the Income Tax Act, 1952 and the term "relevant distribution" has the same meaning as in Part I of the Fifth Schedule to the Finance Act, 1957.

13.—(1) The amount of credit to be allowed for foreign tax under subsection (1) of Section 28 of the Finance Act, 1957, against income tax chargeable under Case VI of Schedule D in respect of any relevant distribution by a company which is, or has been, an Overseas Trade Corporation shall be the lesser of:—

(*a*) the foreign tax appropriate to the amount in respect of which income tax is so chargeable;

(*b*) the United Kingdom income tax charged on that amount.

(2) The foreign tax which for the purposes of paragraph (1) of this Regulation is to be treated as appropriate to the amount in respect of which income tax is chargeable shall be—

(*a*) as regards a period the whole trading income of which is regarded as applied in making the relevant distribution, the whole of the foreign tax paid in respect of the trading income of that period;

(*b*) as regards a period only part of the trading income of which is regarded as applied in making the relevant distribution, that part of the foreign tax paid in respect of the income of that period which bears the same proportion to the whole of the foreign tax so paid as the amount of the trading income of that period which is so applied bears to the whole trading income of the period;

and, where a relevant distribution is regarded as made out of the exempt trading income of more than one period, shall be the sum of the amounts of foreign tax for each such period, calculated under sub-paragraph (*a*) or sub-paragraph (*b*) as the case may be.

(3) Where foreign tax is payable on the exempt trading income of any period under the laws of more than one country, the total of all such taxes shall be aggregated for the purposes of this Regulation.

(4) The amount of credit to be allowed for foreign tax against income tax chargeable under Case VI of Schedule D in accordance with the provisions either of subsection (2) of Section 33 of the Finance Act, 1957, or of paragraph 5 of the Sixth Schedule to that Act on an amount of exempt trading income arising in any period shall be the amount which would have been allowed under paragraphs (1) and (2) of this Regulation if the amount charged had been the gross amount of a dividend distributed out of the exempt trading income of that period.

14.—(1) Where under the provisions of Section 28 of the Finance Act, 1957, credit is given for foreign tax against the tax chargeable under Case VI in respect of a dividend paid by a company which is, or has been, an Overseas Trade Corporation partly or wholly out of exempt trading income, the rate of tax payable after allowance of the credit shall, notwithstanding anything in paragraphs (1) and (2) of Regulation 2 of the Double Taxation Relief (Taxes on Income) (General) Regulations, 1946(a), be treated for all the purposes of the Income Tax Acts as though it were the net United Kingdom rate referred to in Section 350 of the Income Tax Act, 1952.

(2) Where a dividend is paid by a company which is, or has been, an Overseas Trade Corporation and it is subsequently found that the amount of double taxation relief taken into account in connection with the calculation of the net United Kingdom rate applicable to either the part of the dividend paid out of exempt trading income or the part out of investment income is excessive or deficient, the net United Kingdom rate applicable to the next subsequent dividend shall be adjusted so as to correct the excess or deficiency.

(3) Subject to the provisions of paragraph (2) of this Regulation nothing in these Regulations shall affect the calculation of the net United Kingdom rate in respect of that part of a dividend regarded as paid out of the investment income of an Overseas Trade Corporation.

PART VII

COMPUTATION OF EXEMPT TRADING INCOME OF OVERSEAS TRADE CORPORATION FOR PURPOSES OF CHARGE ON UNDISTRIBUTED INCOME

15.—(1) Where, in consequence of a direction given under Section 245 of the Income Tax Act, 1952, with respect to the income of an Overseas Trade Corporation for any period, it is necessary to compute for the purpose of subsection (2) of Section 33 of the Finance Act, 1957, the exempt trading income which arose to the company in that period, the amount of that income shall be computed in accordance with the provisions of the Income Tax Acts relating to the computation of income from a trade for the purposes of assessment to income tax under Case I of Schedule D:

Provided that:

(*a*) the income shall be computed by reference to the income for such period as aforesaid and not by reference to any other period, and

(a) S.R. & O. 1946/466 (Rev. X, p. 328: 1946 I, p. 867).

(*b*) there shall be included in the amount of any such computation any dividend, grant or loan, which under the provisions of Section 35 (3) of the Finance Act, 1957, constitutes trading income of the company.

(2) Where the period specified in a direction is not an accounting period any necessary apportionments and aggregations of profits shall be made on a time basis.

(3) In computing the income for any period—

(*a*) there shall be deducted from the profits or gains of the period an amount on account of capital allowances equal to the amount which would fall to be deducted in ascertaining the exempt trading income of that period under Part II of the Fifth Schedule to the Finance Act, 1957;

(*b*) there shall be added an amount equal to the part of any balancing charge which would fall to be added in ascertaining the amount of exempt trading income under Part II of the Fifth Schedule to the Finance Act, 1957.

Part VIII

Computation of Income of Company which has ceased to be an Overseas Trade Corporation

16. The amount of income arising to a company for a period beginning on or after the date on which it ceased to be an Overseas Trade Corporation shall for the purposes of the Fifth Schedule to the Finance Act, 1957, be taken to be the income of the company from all sources for that period computed as regards each source in accordance with the provisions of the Income Tax Acts relating to the computation of income from that source, except that the income shall be computed by reference to the income for that period and not by reference to any other period:

Provided that

(*a*) the computation shall take into account the appropriate part of any capital allowance or balancing charge made for any year of assessment falling wholly or partly within the period, and the appropriate part as aforesaid shall be ascertained by apportionment on a time basis; and

(*b*) there shall be deducted from the amount so computed the amount of any interest, annuity or other annual payment made in that period from which the company is entitled or required to deduct tax.

By Order of the Commissioners of Inland Revenue.

R. O. Nicholas,
Secretary.

EXPLANATORY NOTE

(*This Note is not part of the Regulations, but is intended to indicate their general purport.*)

Part IV of the Finance Act, 1957, provides for certain relief from income tax and profits tax to Overseas Trade Corporations, that is, broadly, companies which, though managed and controlled in the United Kingdom, carry on all their trading activities overseas. Section 34 of the Act authorises

the making of Regulations by the Commissioners of Inland Revenue for certain specified purposes. The present Regulations make provision, in the main on procedural points, for giving effect to the provisions of Part IV.

Part II of the Regulations lays down the procedure by which a company may qualify as an Overseas Trade Corporation and may appeal against assessments made upon it.

Part III. The relief from income tax and profits tax accorded by the Overseas Trade Corporation scheme applies only to undistributed trading profits. Sections 26 and 27 of the Act require companies to account to the Revenue for tax on sums distributed from such profits. Part III of the Regulations requires a company which is or has been an Overseas Trade Corporation, or a liquidator of such a company, to make returns to the Inspector of sums distributed by way of dividends, grants, loans, etc., out of exempt trading income.

Part IV. Section 23 of the Finance Act, 1957, entitles companies which qualify to be treated as Overseas Trade Corporations to elect that they should not be so treated. This Part of the Regulations lays down the procedure for the making of such claims.

Part V sets out the particulars to be given on dividend warrants issued by a company which is or has been an Overseas Trade Corporation.

Part VI lays down rules for the determination of the amount of credit to be allowed to a company, in computing its liability to tax on sums distributed out of exempt trading income, for tax paid overseas on the profits out of which those distributions are deemed to have been made.

Part VII. Section 33 of the Finance Act, 1957, provides that where a direction is made by the Special Commissioners under Section 245 of the Income Tax Act, 1952, that the income of an Overseas Trade Corporation should, for a particular period, be deemed for the purposes of surtax to be the income of the members of the company, the exempt trading income of that period should also be charged to income tax. This Part of the Regulations provides certain rules for the determination of the amount of the exempt trading income of the company where such a direction is made.

Part VIII lays down rules for computing, for the purposes of allocation of dividends, the income of a company which has been, but has ceased to be, an Overseas Trade Corporation.