

1990 No. 2529

INCOME TAX

The Debts of Overseas Governments (Determination of Relevant Percentage) Regulations 1990

Made - - - - - *10th December 1990*

Coming into force - - - - - *11th December 1990*

The Treasury, in exercise of the powers conferred on them by section 88B of the Income and Corporation Taxes Act 1988(a), hereby make the following Regulations, a draft of which has been laid before, and approved by a resolution of, the House of Commons:

Citation and commencement

1. These Regulations may be cited as the Debts of Overseas Governments (Determination of Relevant Percentage) Regulations 1990 and shall come into force on 11th December 1990.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the A, B and C factors” mean the factors so described in Schedule 1 to these Regulations;

“debt” means a debt to which section 88A(2) of the Income and Corporation Taxes Act 1988(b) applies;

“overseas State authority” has the same meaning as in section 88A(4) of the Income and Corporation Taxes Act 1988;

“the principal section” means section 88B of the Income and Corporation Taxes Act 1988.

(2) For the purposes of these Regulations a debt is connected with a State or territory—

(a) in the case of a debt which is owed by, or payment of which is guaranteed by, an overseas State authority, when it is the State or territory by reference to which the overseas State authority is an overseas State authority; and

(b) in the case of a debt due payment of which is or may be prevented, restricted or subject to conditions—

(i) by virtue of any law of a State or other territory outside the United Kingdom or any act of an overseas State authority, or

(ii) under any agreement entered into in consequence or anticipation of such a law or act,

when it is the State or territory whose law it is or by reference to which the overseas State authority is an overseas State authority.

(a) 1988 c.1; section 88B was inserted by section 74 of the Finance Act 1990 (c.29).

(b) Section 88A was inserted by section 74 of the Finance Act 1990.

Determination of relevant percentage

3.—(1) This regulation provides for the determination of the percentage of a debt by reference to the position at the end of a period of account of a company for the purposes of subsections (2) and (3) of the principal section.

(2) Subject to paragraph (4), the percentage referred to in paragraph (1) shall be that given by Schedule 2 to these Regulations as corresponding to the number which is found by—

- (a) aggregating the numerical values (as adjusted where necessary in accordance with paragraph (5)) attributed by Schedule 1 to these Regulations to such of the A, B and C factors as are applicable at the end of the period of account in question in the case of the State or territory with which the debt is connected,
- (b) aggregating the values (as so adjusted) attributed to such of those factors as are so applicable at the end of each of the four consecutive periods of three months which end with the period ending three months before the end of the period of account in question, and
- (c) calculating the figure which results from dividing the aggregate of the values at the end of each of the periods referred to in sub-paragraphs (a) and (b) by the number of those periods and, if that figure is not a whole number, rounding it up to the next whole number.

(3) Paragraph (4) applies where—

- (a) at the end of a period of account of a company, or
- (b) at the end of one of the four consecutive periods of three months which end with the period of three months before the end of a period of account of a company, (in paragraph (4) referred to as “the attributed value date”) it is found that a numerical value of ten or more is attributed for the first time by Schedule 1 to these Regulations in the case of the State or territory with which the debt is connected.

(4) Where this paragraph applies—

- (a) for the purposes of the aggregation required by paragraph (2)(b) only those values shall be taken into account which are attributed to factors which are applicable in the case of the State or territory in question at the end of the consecutive periods of three months ending on or after the first attributed value date, and
- (b) for the purposes of the calculation required by paragraph (2)(c) only those periods shall be taken into account which end on or after the first attributed value date.

(5) Where the aggregated numerical values attributed by Schedule 1 to these Regulations to such of the A, B and C factors as are applicable at the end of a period are less than 15, those values shall be adjusted by attributing to the C factors one half of the numerical values attributed by that Schedule in place of the values actually so attributed.

Transitional provisions

4.—(1) In relation to the last period of account of a company ending before 20th March 1990, in regulation 3(2) sub-paragraphs (b) and (c) shall be omitted.

(2) In relation to periods of account of the company—

- (a) ending on or after 20th March 1990 and before 20th June 1990, in regulation 3(2)(b) the words “each of the four consecutive periods of three months which end with” shall be omitted;
- (b) ending on or after 20th June 1990 and before 20th September 1990, in regulation 3(2)(b) for the word “four” there shall be substituted the word “two”;
- (c) ending on or after 20th September 1990 and before 20th December 1990, in regulation 3(2)(b) for the word “four” there shall be substituted the word “three”.

(3) Where, in relation to a period of account of the company, regulation 3(2) applies as modified by paragraph (1) or (2), regulation 3(4) shall have effect as if the references in that paragraph to paragraph (2)(b) and (c) were to those sub-paragraphs as so modified.

John Major
Norman Lamont

10th December 1990

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

Regulations 2(1) and 3(2)

A, B AND C FACTORS

INTRODUCTORY

1.—(1) In this Schedule—

“arrears” in relation to repayment of debt, or the payment of interest on debt, do not include arrears arising out of temporary administrative delay which are expected to be corrected within a reasonable period of time and “in arrear” shall be construed accordingly;

“external creditor” in relation to a debt, means a creditor which is an international financial institution, an overseas State authority (other than one which is an overseas State authority by reference to the State or territory with which the debt is connected) and any other creditor who is resident outside the State or territory by reference to which section 88A(2) of the Income and Corporation Taxes Act 1988 applies to the debt;

“international financial institution” means the International Monetary Fund, the World Bank, the International Bank for Reconstruction and Development, the International Development Agency, the International Finance Corporation and any regional development bank;

“regional development bank” means any of the European Investment Bank, the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Inter-American Development Bank, and any other investment or development bank constituted by international agreement which is for the time being specified in Schedule 2 to the Banking Act 1987(a).

(2) References in this Schedule—

- (a) to the relevant date are references to the end of any period of account or period of three months at which the applicability of the A, B and C factors is in question for the purposes of determining a percentage under these Regulations;
- (b) to an agreement to reschedule or restructure obligations do not include an agreement by a State or territory to make repayment of debt and payment of outstanding interest in full at an earlier date than the due date or to make future such repayments or payments by reference to earlier dates than the due dates;
- (c) to the figures for the latest available period and at the latest available date are respectively to the figures for the latest period of twelve months ending before the relevant date for which figures are available and to the figures at the latest date before the relevant date for which figures are available.

THE A FACTORS

2. The A factors in the case of a State or territory, which are factors which show the inability or unwillingness of the State or territory to meet its obligations when they are due or thereafter, and the numerical values attributable to them are those given by Table A below.

Table A

| <i>Factor</i> | <i>Numerical value</i> |
|--|------------------------|
| (1) The State or territory has taken unilateral action to suspend, either in whole or in part, repayment of debts or payment of interest on debts to a general class of external creditors and at the relevant date the suspension has been in effect— | |
| for three months or less, or is about to end; | 2 |
| for more than three months but not more than one year; | 4 |
| for more than one year but not more than three years; | 8 |
| for more than three years. | 12 |
| (2) (a) The State or territory has entered into an agreement to reschedule or restructure its obligations as to repayment of debts, or payment of interest on debts, to external creditors and at the relevant date the agreement was entered into— | |
| more than three years ago but not more than five years ago; | 6 |
| more than two years ago but not more than three years ago; | 8 |

(a) 1987 c.22.

Table A – continued

| <i>Factor</i> | <i>Numerical value</i> |
|--|------------------------|
| two years ago or less or has only been reached in principle. | 12 |
| (b) The State or territory within the period of five years preceding the relevant date has refused to co-operate in a rescheduling or restructuring of its obligations as to repayment of debts, or payment of interest on debts, to external creditors and either– | |
| (i) has imposed a limit on its performance of such obligations, without the agreement of those creditors, or | |
| (ii) has had severe problems in performing those obligations, so that it might have been expected to have entered into an agreement on more than one occasion to reschedule or restructure them and, if it had done so, would be likely still to have arrears of repayment or interest at the relevant date. | 12 |
| (3) (a) The State or territory has entered into a further agreement to reschedule or restructure obligations as to repayment of debt to external creditors which have already been rescheduled or restructured since January 1983 and at the relevant date the further agreement was entered into– | |
| more than two years ago but not more than five years ago; | 6 |
| more than one year ago but not more than two years ago; | 8 |
| one year ago or less or has only been reached in principle. | 12 |
| (b) The State or territory within the period of five years preceding the relevant date has refused to co-operate in a rescheduling or restructuring of its obligations as to repayment of debt to external creditors and either– | |
| (i) has imposed a limit on the performance of such obligations without the agreement of those creditors, or | |
| (ii) has had severe problems in performing those obligations, so that it might have been expected to have entered into an agreement on more than one occasion to reschedule or restructure them and, if it had done so, would be likely still to have arrears of repayment at the relevant date. | 12 |

THE B FACTORS

3. The B factors in the case of a State or territory, which are factors which show that the State or territory has current difficulties in meeting its obligations, and the numerical values attributable to them are those given by Table B below.

Table B

| <i>Factor</i> | <i>Numerical value</i> |
|---|------------------------|
| (4) The State or territory is in arrear in repaying debt, or in paying interest on debt, to one or more international financial institutions so that, in the case of the International Monetary Fund, it has been declared ineligible to draw on the general resources of that Fund as held in the General Resources Account or any account which may be substituted for it by amendment of the Articles of Agreement of that Fund or, in the case of the World Bank, the International Bank for Reconstruction and Development, the International Development Agency, the International Finance Corporation or a regional development bank, disbursement of loans to it has stopped and at the relevant date the arrears in question have existed– | |
| for less than two years; | 10 |
| for two years or more. | 15 |
| (5) The State or territory is in arrear in repaying debt to external creditors other than international financial institutions, the arrears have neither been the subject of a rescheduling or restructuring agreement nor been | |

Table B – continued

| <i>Factor</i> | <i>Numerical value</i> |
|---|------------------------|
| repaid and immediately lent back to that State or territory and at the relevant date they have existed— | |
| for three months or less; | 4 |
| for more than three months but not more than one year; | 8 |
| for more than one year. | 10 |
| (6) The State or territory is in arrear in paying interest on debt to external creditors other than international financial institutions, the arrears have neither been the subject of a rescheduling or restructuring agreement nor been paid and immediately lent back to that State or territory and at the relevant date they have existed— | |
| for three months or less; | 4 |
| for more than three months but not more than one year; | 8 |
| for more than one year. | 10 |
| (7) The State or territory has entered into an agreement to reschedule or restructure its obligations as to repayment of debts, or payment of interest on debts, to external creditors generally, or with creditors which are governments of other States or territories in particular, under which— | |
| (a) the creditors have lent further amounts to enable the State or territory to make repayments of debt which are in arrear and pay arrears of interest; or | |
| (b) arrears of interest have been added to the amount of outstanding debt or have been paid and immediately lent back to the State or territory; or | |
| (c) arrears in repayment of debts which have already been the subject of a rescheduling or restructuring agreement or of unrescheduled debts are rescheduled or restructured; | |
| and at the relevant date the agreement was entered into— | |
| more than three years ago but not more than five years ago; | 4 |
| more than two years ago but not more than three years ago; | 8 |
| two years ago or less. | 10 |

THE C FACTORS

4. The C factors in the case of a State or territory, which are factors which provide evidence of the likelihood of that State or territory having persistent or future repayment difficulties, and the numerical values attributable to them are those given by Table C below.

Table C

| <i>Factor</i> | <i>Numerical Value</i> |
|--|------------------------|
| (8) The interest service ratio applicable in the case of the State or territory on the basis of the figures for the latest available period, that is to say the result of dividing the total amount of interest payable for that period by the value of exports of goods and services (including interest and net transfer receipts) for the same period, expressing that result as a percentage and rounding that percentage to the nearest one tenth of one per cent., is— | |
| between 15 per cent. and 24.9 per cent.; | 3 |
| between 25 per cent. and 34.9 per cent.; | 5 |
| between 35 per cent. and 44.9 per cent.; | 7 |
| 45 per cent. or more. | 10 |
| (9) The number of months for which the State or territory has visible import cover at the relevant date, that is to say the result rounded to the nearest one tenth of one month of the formula | |

$$\frac{A}{B} \times 12$$

Table C – continued

| <i>Factor</i> | <i>Numerical value</i> |
|--|------------------------|
| where– | |
| A is the amount or value of the assets held by the monetary authorities of the State or territory, which may freely be used to support the exchange value of the currency of that State or territory, on the basis of the figures at the latest available date including assets which may readily be used to obtain such assets and gold valued at 75 per cent. of its price expressed in United States dollars per fine troy ounce as declared at the morning fixing in the London Bullion Market on that date; and | |
| B is the annual value of imports of goods and services into the State or territory on the basis of the figure for the latest available period; is– | |
| between 2 and 3.9 months; | 3 |
| between one month and 1.9 months; | 5 |
| between 0.5 and 0.9 of one month; | 7 |
| 0.4 of one month or less. | 10 |
| (10) The ratio between debt and gross domestic product applicable in the case of the State or territory on the basis of the figures for the latest available period, that is to say the total external debt of the State or territory at the end of that period divided by the annual total of goods produced and services provided in that period, the result being expressed as a percentage and rounded to the nearest one tenth of one percentage point, is– | |
| between 50 and 74.9 per cent.; | 3 |
| between 75 and 99.9 per cent.; | 5 |
| between 100 and 149.9 per cent.; | 7 |
| 150 per cent. or greater. | 10 |
| (11) The ratio between debt and exports applicable in the case of the State or territory on the basis of the figures for the latest available period, that is to say the total external debt of the State or territory at the end of that period divided by the value of exports of goods and services (including interest and net transfer receipts) in that period, the result being expressed as a percentage and rounded to the nearest percentage point, is– | |
| between 200 per cent. and 299 per cent.; | 3 |
| between 300 per cent. and 399 per cent.; | 5 |
| between 400 per cent. and 599 per cent.; | 7 |
| 600 per cent. or greater. | 10 |
| (12) The State or territory at the relevant date– | |
| (a) is in breach of performance criteria which were set for it (and which have not been subsequently waived) in an agreement which it has entered into with the International Monetary Fund; or | |
| (b) has problems in relation to its external debt of such a nature as would justify an approach to the International Monetary Fund for assistance, but it is– | |
| (i) unwilling to do so, or | |
| (ii) unable to do so because it is not a member of that Fund. | 4 |
| (13) The State or territory is expected to have in the period of twelve months following the relevant date an external financing gap, that is to say the surplus on the prospective balance of its external transactions on both current and capital account (other than those associated with the servicing of external debt) is unlikely to be sufficient to meet in full its obligations to repay debt or to pay interest on debt for that period in the absence of exceptional financing measures, such as agreement with its creditors to postpone the carrying out of its obligations, or for the provision of new loans to secure repayment of existing loans, and agreement by its creditors to reduce their claims to repayment or to interest, and accumulation of arrears, and no | |

Table C - continued

| <i>Factor</i> | <i>Numerical value</i> |
|---|------------------------|
| agreement has been reached in principle with its principal creditors to fill that gap. | |
| (14) The price expressed as a percentage of its face value which the external debt of the State or territory might reasonably have been expected to fetch on a sale in the open market at the relevant date, is- | |
| between 50 per cent. and 69.99 per cent.; | 2 |
| between 30 per cent. and 49.99 per cent.; | 4 |
| between 10 per cent. and 29.99 per cent.; | 8 |
| smaller than 10 per cent. | 12 |
| (15) 30 per cent. or more of the value of the exports by the State or territory of goods and services on the basis of the figures for the latest available period is represented by exports of a single primary commodity or commodity based product or by receipts from a single category of service earnings. | 4 |

SCHEDULE 2

Regulation 3(2)

CORRESPONDING PERCENTAGES

A percentage shown in column 2 of the Table below shall correspond to the number shown opposite to it in column 1.

Table

| <i>(1) Number</i> | <i>(2) Percentage</i> |
|-----------------------|---------------------------|
| 0-9 | 0 |
| 10 | 5 |
| 11 | 5 |
| 12 | 6 |
| 13 | 7 |
| 14 | 7 |
| 15 | 8 |
| 16 | 9 |
| 17 | 9 |
| 18 | 10 |
| 19 | 11 |
| 20 | 11 |
| 21 | 12 |
| 22 | 12 |
| 23 | 13 |
| 24 | 13 |
| 25 | 14 |
| 26 | 14 |
| 27 | 15 |
| 28 | 16 |
| 29 | 16 |
| 30 | 17 |
| 31 | 18 |
| 32 | 18 |
| 33 | 19 |
| 34 | 20 |
| 35 | 20 |
| 36 | 21 |
| 37 | 22 |
| 38 | 22 |
| 39 | 23 |
| 40 | 24 |
| 41 | 25 |

Table – continued

| (1) Number | (2) Percentage |
|---------------|-------------------|
| 42 | 25 |
| 43 | 26 |
| 44 | 27 |
| 45 | 28 |
| 46 | 29 |
| 47 | 30 |
| 48 | 31 |
| 49 | 32 |
| 50 | 33 |
| 51 | 34 |
| 52 | 35 |
| 53 | 36 |
| 54 | 37 |
| 55 | 38 |
| 56 | 40 |
| 57 | 41 |
| 58 | 42 |
| 59 | 44 |
| 60 | 46 |
| 61 | 47 |
| 62 | 49 |
| 63 | 50 |
| 64 | 52 |
| 65 | 53 |
| 66 | 55 |
| 67 | 56 |
| 68 | 57 |
| 69 | 58 |
| 70 | 59 |
| 71 | 61 |
| 72 | 62 |
| 73 | 63 |
| 74 | 64 |
| 75 | 65 |
| 76 | 66 |
| 77 | 67 |
| 78 | 68 |
| 79 | 69 |
| 80 | 70 |
| 81 | 71 |
| 82 | 72 |
| 83 | 73 |
| 84 | 75 |
| 85 | 76 |
| 86 | 76 |
| 87 | 77 |
| 88 | 78 |
| 89 | 79 |
| 90 | 80 |
| 91 | 81 |
| 92 | 82 |
| 93 | 83 |
| 94 | 84 |
| 95 | 85 |
| 96 | 86 |
| 97 | 87 |
| 98 | 88 |
| 99 | 89 |
| 100 | 90 |
| 101 | 90 |

Table – continued

| (1) <i>Number</i> | (2) <i>Percentage</i> |
|----------------------|--------------------------|
| 102 | 90 |
| 103 | 91 |
| 104 | 91 |
| 105 | 91 |
| 106 | 92 |
| 107 | 92 |
| 108 | 93 |
| 109 | 93 |
| 110 | 93 |
| 111 | 93 |
| 112 | 94 |
| 113 | 94 |
| 114 | 94 |
| 115 | 95 |
| 116 | 95 |
| 117 | 95 |
| 118 | 96 |
| 119 | 96 |
| 120 | 97 |
| 121 | 97 |
| 122 | 97 |
| 123 | 97 |
| 124 | 97 |
| 125 | 97 |
| 126 | 98 |
| 127 | 98 |
| 128 | 98 |
| 129 | 98 |
| 130 | 98 |
| 131 | 98 |
| 132 | 99 |
| 133 | 99 |
| 134 | 99 |
| 135 | 99 |
| 136 | 99 |
| 137 | 99 |
| 138 | 99 |
| 139 | 100 |
| 140 | 100 |
| 141 | 100 |
| 142 | 100 |
| 143 | 100 |
| 144 | 100 |
| 145 | 100 |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide the method of determining the "relevant percentage" in relation to a debt owed to a company which is owed or guaranteed by an overseas State authority (or payment of which is or may be prevented or restricted by an overseas State). By virtue of section 88B(1) of the Income and Corporation Taxes Act 1988 the "relevant percentage" of such a debt is the maximum amount of that debt which may be estimated to be bad for the purposes of section 74(j) of that Act.

Regulation 1 provides for citation and commencement.

Regulation 2 contains definitions.

Regulation 3(1) and (2) provides that the relevant percentage of a debt is to be determined by

- finding the numerical values attributed to various factors by Schedule 1 (which relate to the overseas State and its ability to repay, or make payments of interest on, its debts) which are applicable at the end of the period of account of the company;
- aggregating those numerical values with the values attributed by Schedule 1 to factors applicable at the end of each of the four periods of three months which end with the period ending three months before the end of the period of account;
- averaging the result; and
- finding the percentage shown in Schedule 2 as corresponding to that average.

Regulation 3(3) and (4) modifies the process of aggregation and averaging when a numerical value of ten or more is attributed for the first time to factors relating to a particular State. Regulation 3(5) reduces the numerical values attributed at the end of a period to certain of those factors by half when the aggregate of all the numerical values attributed at that date is less than 15.

Regulation 4 contains transitional provisions excluding aggregation and averaging in relation to periods of account of a company ending before 20th March 1990 and modifying the process of aggregation and averaging in relation to periods ending before 20th December 1990.

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