

2015 No. 2056

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

STAMP DUTY

STAMP DUTY RESERVE TAX

**The Taxation of Regulatory Capital Securities (Amendment)
Regulations 2015**

Made - - - - *16th December 2015*

Coming into force - - *1st January 2016*

The Treasury make the following Regulations in exercise of the powers conferred by section 221 of the Finance Act 2012^(a).

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with section 221(6) of the Finance Act 2012.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Taxation of Regulatory Capital Securities (Amendment) Regulations 2015 and come into force on 1st January 2016.

(2) These Regulations have effect—

- (a) for the purposes of income tax, for payments made on or after 1st January 2016;
- (b) for the purposes of corporation tax, for accounting periods beginning on or after that date (this is subject to paragraph (3) and regulation 3);
- (c) for the purposes of capital gains tax, in relation to disposals made on or after that date;
- (d) for the purposes of stamp duty, in relation to instruments executed on or after that date;
- (e) for the purposes of stamp duty reserve tax—
 - (i) in the case of agreements to transfer securities which are not conditional, in relation to agreements made on or after that date, and

- (ii) in the case of agreements to transfer securities which are conditional, in relation to agreements where the condition is satisfied on or after that date.

(3) In relation to instruments issued by a company in an accounting period beginning before 1st January 2016—

- (a) amendments made by regulation 2(3)(a)(i), (c) and (d) (fair value accounting) do not apply, and
- (b) references to fair value accounting in the Taxation of Regulatory Capital Securities Regulations 2013(a) (“the principal Regulations”) are to be read without regard to the amendment of section 313(5) of CTA 2009 made by paragraph 7(7) of Schedule 7 to F(No 2)A 2015(b).

Amendment of the Taxation of Regulatory Capital Securities Regulations 2013

2.—(1) The principal Regulations are amended as follows.

(2) In regulation 2—

(a) in paragraph (1)—

- (i) after sub-paragraph (a) omit “or”,
- (ii) after sub-paragraph (b) insert—

“(c) an item listed in point (a)(iii) or (b) of Article 69 of CDR which is a Tier 1 item under—

(i) Article 69 or 79 of CDR, or

(ii) rule 4.1 in the Annex to the PRA Rulebook: Solvency II Firms: Transitional Measures Instrument 2015(c) (“the Transitional Instrument”), or

(d) an item listed in point (a)(iii) or (b) of Article 72 of CDR which is a Tier 2 item under—

(i) Article 72 or 79 of CDR, or

(ii) rule 4.2 in the Annex to the Transitional Instrument.”,

(b) in paragraph (4), for “In these Regulations, “CRR”” substitute—

“In these Regulations—

“CDR” means the Commission Delegated Regulation (EU) 2015/35(d) (as amended from time to time),

“CRR””.

(3) In regulation 3—

(a) in paragraph (2)—

- (i) in sub-paragraph (b), for the words from “fair” to the end substitute “measuring the whole or part of the security at fair value were not generally accepted accounting practice (but see paragraph (3A)), and”,
- (ii) in sub-paragraph (c)(i), after “instrument” insert “or an item listed in point (a)(i) or (ii) of Article 69 of CDR”,

(b) in paragraph (3)—

(i) for “carrying value” substitute “tax-adjusted carrying value”,

(ii) for “section 317” substitute “section 465B(e)”,

(a) S.I. 2013/3209.

(b) 2015 c. 33.

(c) This instrument was made on 17th March 2015 by order of the Board of the Prudential Regulation Authority and can be found at http://www.prarulebook.co.uk/rulebook/Media/Get/4f24735c-d66e-4be7-aa93-6bb0d4c8d2c7/PRA_2015_26/pdf.

(d) OJ L12,17.1.2015, p.1.

(e) Section 465B was inserted by paragraph 52 of Schedule 7 to the Finance (No.2) Act 2015.

(c) after paragraph (3) insert—

“(3A) Paragraph (2)(b) does not prevent the carrying value of the security being adjusted as necessary where the security is the hedged item under a designated fair value hedge.”,

(d) in paragraph (4), omit the definition of “fair value accounting”.

(4) After regulation 3, insert—

“Amounts recognised in equity

3A.—(1) This regulation applies if in accordance with generally accepted accounting practice, an amount in respect of a regulatory capital security relating to any of the matters in section 306A(1) of CTA 2009(a)—

(a) is recognised in equity or shareholders’ funds for a period, and

(b) is not recognised in the company’s accounts for the period as an item of profit or loss or as an item of other comprehensive income.

(2) The amount is to be brought into account for the period for the purposes of Part 5 of CTA 2009(b) in the same way as an amount which is brought into account as a credit or debit in determining the company’s profit or loss for the period in accordance with generally accepted accounting practice.

(3) But this regulation does not bring into account for the purposes of Part 5 of CTA 2009 any exchange gain or loss of the company so far as it is recognised in the company’s statement of total recognised gains and losses, statement of recognised income and expense, statement of changes in equity or statement of income and retained earnings.

(4) In this regulation “item of profit or loss”, “item of other comprehensive income”, “statement of total recognised gains and losses”, “statement of recognised income and expense”, “statement of changes in equity” and “statement of income and retained earnings” each has the meaning that it has for accounting purposes.”

Transitional provisions

3.—(1) This regulation applies for the purposes of corporation tax in relation to the first accounting period beginning on or after 1st January 2016 in respect of a security specified in paragraph (2)—

(a) issued before that period, and

(b) to which Part 5 of CTA 2009 applied in the accounting period immediately preceding that period.

(2) A specified security is—

(a) an item listed in point (a)(iii) or (b) of Article 69 of the Commission Delegated Regulation (EU) 2015/35 (“the CDR”) which is a Tier 1 item under—

(i) Article 69 of the CDR, or

(ii) rule 4.1 in the Annex to the PRA Rulebook: Solvency II Firms: Transitional Measures Instrument 2015 (“the Transitional Instrument”), or

(b) an item listed in point (a)(iii) or (b) of Article 72 of the CDR which is a Tier 2 item under—

(i) Article 72 of the CDR, or

(ii) rule 4.2 in the Annex to the Transitional Instrument.

(3) In this regulation—

(a) Section 306A was inserted by paragraph 3 of Schedule 7 to the Finance (No.2) Act 2015.

(b) Part 5 of the Corporation Tax Act 2009 was relevantly amended by Schedule 7 to the Finance (No.2) Act 2015.

- (a) the accounting period immediately preceding the first accounting period beginning on or after 1st January 2016 is referred to as “the earlier period”, and
- (b) an accounting period beginning on or after 1st January 2016 is referred to as “the later period”.

(4) Where amounts in respect of the security are brought into account differently in the earlier period and the later period as a result of the application of regulation 3(2)(b) of the principal Regulations (disapplication of fair value accounting), a credit or debit (as the case may be) must be brought into account for the purposes of Part 5 of CTA 2009 in the later period in the same way as a credit or debit which is brought into account in determining the company’s profit or loss for that period in accordance with generally accepted accounting practice.

(5) The amount of the credit or debit to be brought into account is such amount as is just and reasonable in the circumstances and with regard to whether as a result of the principal Regulations any amounts cease to be brought into account or are brought into account more than once.

(6) Before calculating any credit or debit required by this regulation—

- (a) the overall transitional adjustment required by paragraphs 108 and 109 of Schedule 7 to the F(No 2)A 2015 is to be calculated and applied, and
- (b) where section 316, 318, 614 or 615 of CTA 2009 (adjustments on change of accounting basis)(a) applies in relation to the later period, any credit or debit required by those sections is to be calculated first.

David Evennett
Mel Stride

16th December 2015

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations amend the Taxation of Regulatory Capital Securities Regulations 2013 to make provision in relation to the taxation of new types of regulatory capital security issued to meet the requirements of the Commission Directive (EU) No 2009/138/EC and Commission Delegated Regulation (EU) No 2015/35 which impose new prudential requirements on financial institutions.

Regulation 1 provides for citation, commencement and effect.

Regulation 2(1) introduces the amendments.

Regulation 2(2) amends the definition of the term “regulatory capital security” to include certain Tier 1 and Tier 2 items within the Commission Delegated Regulation (EU) 2015/35.

Regulation 2(3) excludes credits and debits from Part 5 of the Corporation Tax Act 2009 (“CTA 2009”) on certain conversions of the new types of regulatory capital and amends the fair value accounting provision, the term “carrying value” and statutory cross-reference in consequence of changes made to Part 5 of CTA 2009 by the Finance (No.2) Act 2015.

Regulation 2(4) inserts a new regulation 3A to ensure that payments of a coupon in respect of regulatory securities will continue to be deductible following changes made to Part 5 of CTA 2009 by the Finance (No.2) Act 2015.

Regulation 3 makes transitional provisions to take account of any change in accounting treatment which is prescribed for existing regulatory capital securities to which these Regulations apply.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.gov.uk/collections/tax-information-and-impact-notes-tiins>.

(a) Section 316 was substituted and section 318 was amended by paragraphs 10 and 12 respectively of Schedule 7 to the Finance (No 2) Act 2015.

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£4.25

UK2015121632 12/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/2056>

ISBN 978-0-11-114238-7



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