
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations 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 36/2013 (OJ L 176/338, 27.6.13) and Commission Regulation (EU) No 575/2013 (OJ L 176/1, 27.6.13) which impose new prudential requirements on financial institutions.

Regulation 1 provides for citation, commencement and effect.

Regulation 2 defines the term “regulatory capital security” by reference to Additional Tier 1 instruments and Tier 2 instruments within Commission Regulation (EU) No 575/2013.

Regulation 3 provides that regulatory capital securities represent loan relationships for the purposes of the Corporation Tax Acts, but this is subject to special rules in respect of the issuer of such securities and, in the case of a connected company, the holder of the security. In those cases, the corporation tax provisions treating an embedded derivative or equity instrument as a separate contract are disapplied, fair value accounting of the security is not permitted for tax purposes and no credits or debits are brought into account in relation to certain conversions, write-downs and subsequent write-ups of the security.

Regulation 4 provides that a regulatory capital security is treated as a normal commercial loan.

Regulation 5 provides that a payment in respect of a regulatory capital security is not a distribution but is income under Chapter 2 of Part 4 of the Income Tax (Trading and Other Income) Act 2005.

Regulation 6 provides a specific exception from the duty to deduct tax from yearly interest in sections 874 and 889 Income Tax Act 2007.

Regulation 7 provides an exemption from stamp duties.

Regulation 8 is an anti-avoidance provision.

Regulation 9 disapply the exceptions from the duty to deduct tax from yearly interest in section 878 (interest paid by banks) and section 885 (authorised persons dealing in financial instruments) of the Income Tax Act 2007.

Regulation 10 makes consequential amendments to the Loan Relationship and Derivative Contracts (Disregard and Bringing into Account of Profits and Losses) Regulations 2004.

Regulation 11 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.

Regulation 12 makes consequential repeals.

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>.