
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Taxation of Securitisation Companies Regulations 2006

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Taxation of Securitisation Companies Regulations 2006 and shall come into force on the day after the day on which they are made.

(2) These Regulations have effect for periods of account beginning on or after 1st January 2007.

Interpretation

2.—(1) In these Regulations—

“asset-holding company” has the meaning given by regulation 6;

“capital market arrangement” and “capital market investment” have the same meaning as in section 72B(1) of the Insolvency Act 1986⁽¹⁾ (see paragraphs 1, 2 and 3 of Schedule 2A to that Act);

“commercial paper funded company” has the meaning given by regulation 9;

“financial asset” has the meaning it has for generally accepted accounting practice (subject to paragraph (2)) but—

(a) includes derivative contracts as defined for the purposes of Schedule 26 to the Finance Act 2002 (see paragraph 2 (1) of that Schedule ⁽²⁾) whether otherwise constituting an asset or a liability, and

(b) does not include shares (other than shares in a securitisation company which is party to the capital market arrangement);

“ICTA” means the Income and Corporation Taxes Act 1988⁽³⁾;

“independent persons” means persons who are not connected with a company (and see paragraph (3));

“intermediate borrowing company” has the meaning given by regulation 7;

“note-issuing company” has the meaning given by regulation 5;

“related transaction” is to be construed in accordance with paragraphs (4) and (5);

“retained profit” is to be construed in accordance with regulation 10;

“securitisation company” has the meaning given by regulation 4;

“specified regulations” means regulations 14 (corporation tax charge) and 16 to 20 (application, modification and non-application of provisions of the Corporation Tax Acts);

(1) 1986 c.45. Section 72B was inserted by section 250(1) of the Enterprise Act 2002 (c. 40) and Schedule 2A was inserted by section 250(2) of, and Schedule 18 to, that Act. Paragraph 1 of Schedule 2A was amended by S.I. 2003/1468 and S.I. 2003/2093.

(2) 2002 c. 23. Paragraph 2(1) was amended by articles 2 and 3 of S.I. 2004/2201.

(3) 1988 c. 1.

“warehouse company” has the meaning given by regulation 8.

(2) For the purposes of these Regulations whether an asset acquired, held or managed by a company is a financial asset shall be determined at the time that asset is first acquired, held or managed by that company.

(3) Section 839 of ICTA(4) (connected persons) applies for the purposes of the definition of “independent persons”, except that in applying the definition of “control” in that section a person is not to be treated as a participator in a company by reason only that he is a loan creditor of the company.

(4) For the purpose of these Regulations one or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—

- (a) the likely effect of the transactions, and
- (b) the circumstances in which the transactions are entered into or effected,

that none of the transactions would have been entered into or effected independently of the arrangements.

(5) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—

- (a) are not between the same parties, or
- (b) are not between the parties to the capital market arrangements.

Scope of these Regulations

3.—(1) These Regulations make provision as to the application of the Corporation Tax Acts in relation to a securitisation company.

(2) The Regulations deal with the following matters—

- (a) they define “securitisation company” and related expressions (see regulations 4 to 10);
- (b) they specify securitisation companies to which specified regulations do not apply (see regulations 11 to 12);
- (c) they specify companies to which these Regulations do not apply (see regulation 13);
- (d) they make provision as to profit of a securitisation company to be brought into account for an accounting period for corporation tax purposes (see regulation 14);
- (e) they make supplementary provision (see regulations 15 to 21).

Meaning of “securitisation company” and related expressions

Meaning of “securitisation company”

4.—(1) For the purposes of these Regulations a “securitisation company” means a company that meets conditions A and B.

(2) Condition A is that the company is—

- (a) a note-issuing company (see regulation 5),
- (b) an asset-holding company (see regulation 6),
- (c) an intermediate borrowing company (see regulation 7),

(4) 1988 c. 1. Section 839 was amended by section 74 of, and paragraph 20 of Schedule 17 to, the Finance Act 1995 (c. 4), section 882 of, and paragraph 341 of Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5), and S.I. 1988/745.

- (d) a warehouse company (see regulation 8), or
 - (e) a commercial paper funded company (see regulation 9).
- (3) Condition B is that the company has a retained profit (see regulation 10).

Meaning of “note-issuing company”

5.—(1) For the purposes of these Regulations a “note-issuing company” means a company that meets conditions A to D.

(2) Condition A is that the company is within section 84(2)(a) of the Finance Act 2005.

(3) Condition B is that the securities that represent the capital market investment referred to in section 84(2)(a)(ii) of that Act are issued wholly or mainly to independent persons.

(4) Condition C is that the total value of the capital market investments made under the capital market arrangement referred to in section 84(2)(a)(iii) of that Act is at least £10 million.

(5) Condition D is that the company’s only business apart from the activity mentioned in section 84(2)(a)(i) of that Act (being party as debtor to a capital market investment), and apart from any incidental activities, consists in one or both of the following activities—

- (a) acquiring, holding and managing financial assets forming the whole or part of the security for the capital market arrangement; or
- (b) acting as guarantor in respect of loan relationships, derivative contracts, finance leases or other liabilities of other companies where the whole, or substantially the whole, of the company’s rights in respect of the guarantee (including any right of subrogation) form the whole or part of the security for the capital market arrangement.

Meaning of “asset-holding company”

6.—(1) For the purposes of these Regulations an “asset-holding company” means a company that meets conditions A and B.

(2) Condition A is that the company’s business, apart from any incidental activities, consists in acquiring, holding and managing financial assets forming the whole or part of the security for a capital market arrangement entered into by a note-issuing company.

(3) Condition B is that the company’s liabilities representing debtor relationships are owed wholly or mainly to a note-issuing company or intermediate borrowing company.

Meaning of “intermediate borrowing company”

7.—(1) For the purposes of these Regulations an “intermediate borrowing company” means a company that meets conditions A and B.

(2) Condition A is that the company’s only business, apart from any incidental activities, is to enter into and be a party to creditor relationships with—

- (a) an asset-holding company,
- (b) a company that would be an asset-holding company if the assets forming the security for the capital market arrangement were financial assets,
- (c) a partnership that would be an asset-holding company if it were a company and the assets forming the security for the capital market arrangement were financial assets, or
- (d) another intermediate borrowing company.

(3) Condition B is that the company’s liabilities representing debtor relationships are owed wholly or mainly to a note-issuing company or another intermediate borrowing company.

Meaning of “warehouse company”

8. For the purposes of these Regulations a “warehouse company” means a company whose business, apart from any incidental activities, consists in acquiring and holding financial assets for the purpose—

- (a) of transferring them to a company (whether or not yet in existence) that at the time of the transfer is, or as a result of the transfer will become, an asset-holding or note-issuing company, or
- (b) of itself becoming an asset-holding or note-issuing company.

Meaning of “commercial paper funded company”

9. For the purposes of these Regulations a “commercial paper funded company” means—

- (a) a company that was an asset-holding company but whose obligations under debtor relationships to a note-issuing company or intermediate borrowing company—
 - (i) have been transferred to, or
 - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking, or
- (b) a company that was an intermediate borrowing company but whose obligations under debtor relationships to a note-issuing company—
 - (i) have been transferred to, or
 - (ii) have been replaced by obligations under debtor relationships to, one or more companies carrying on a business of banking.

Meaning of “retained profit”

10.—(1) For the purposes of these Regulations the “retained profit” of a securitisation company for an accounting period is the amount required by the capital market arrangement or a related transaction to be retained, made available to be retained, or designated as profits of the securitisation company (however described).

(2) If retained profit relates to two or more accounting periods, it shall be apportioned on a just and reasonable basis between them.

(3) If in an accounting period the securitisation company has insufficient funds available to meet the retained profit required by the capital market arrangement or a related transaction—

- (a) the amount of the retained profit for the purposes of these Regulations is the amount actually retained as profit for that accounting period, and
- (b) in a later accounting period the amount of the retained profit may be increased by up to the amount of the shortfall in the earlier period.

Companies to which specified regulations do not apply

Securitisation companies that do not meet the payments condition

11.—(1) The specified regulations do not apply to a securitisation company that—

- (a) does not meet the payments condition, or
- (b) at any time has not met the payments condition.

(2) The payments condition is that in any accounting period R is equal to or less than the sum of P + RA + RP

(3) In paragraph (2)—

R is, subject to paragraph (6), the aggregate of—

- (a) amounts received by the securitisation company in the accounting period, and
- (b) amounts which have been—
 - (i) retained as RA in that accounting period, or
 - (ii) taken into account as RA for the purposes of this regulation in a previous accounting period,

where those amounts are no longer reasonably required to be retained as RA;

P is the aggregate amount of—

- (a) payments made by the securitisation company in the accounting period and the following 18 months except payments which have already been taken into account for the purposes of this regulation for a previous accounting period, and
- (b) payments made by the securitisation company in the previous accounting period but not taken into account for the purposes of this regulation;

RA is the aggregate of amounts retained by the securitisation company in the accounting period, which have not already been taken into account for the purposes of this regulation in a previous accounting period, which are reasonably required to—

- (a) provide for losses or expenses arising from the company's business, or
- (b) maintain or enhance the company's creditworthiness; and

RP is the amount of the retained profit of the securitisation company in the accounting period.

(4) If a securitisation company receives amounts or makes payments of amounts in a currency other than its functional currency, that amount shall be translated into the functional currency by reference to the appropriate exchange rate for the last day of the accounting period.

(5) For the purposes of this regulation the aggregate amount of payments made includes any payment which was not made but which would have been made but for—

- (a) a legal prohibition, or
- (b) a reasonable excuse for failing to make that payment,

but if any such payment is subsequently made it shall be disregarded.

(6) In the case of a company which has elected in accordance with regulation 13(2) that these Regulations shall apply—

- (a) in the first accounting period to which these Regulations apply, R includes an amount that would be given by the formula—

$$R - P - RA - RP$$

in relation to the previous accounting period (“the relevant accounting period”);

- (b) sub-paragraph (b)(ii) of the definition of R in paragraph (3) shall apply as if there were included in those amounts the aggregate of amounts retained by the company in previous accounting periods, in which these Regulations did not apply, which were reasonably required to—

- (i) provide for losses or expenses arising from the company's business, or
- (ii) maintain or enhance the company's creditworthiness.

(7) For the purposes of the formula in paragraph (6)(a)—

R is the aggregate of amounts received by the company in the relevant accounting period;

P is the aggregate amount of payments made by the company in the relevant accounting period;

RA is the aggregate of amounts retained by the company for the relevant accounting period which were reasonably required to—

- (a) provide for losses or expenses arising from the company’s business, or
- (b) maintain or enhance the company’s creditworthiness; and

RP is the amount that would be the retained profit of the company in the relevant accounting period if these Regulations applied.

(8) In this regulation—

“appropriate exchange rate” has the meaning given in section 92D(2)(b) of the Finance Act 1993⁽⁵⁾;

“functional currency” has the meaning given in section 92E(3) of the Finance Act 1993⁽⁶⁾;

“payment” includes part of a payment.

Securitisation companies that have an unallowable purpose

12.—(1) The specified regulations do not apply to a securitisation company that—

- (a) has an unallowable purpose, or
- (b) at any time has had an unallowable purpose.

(2) For the purpose of these Regulations a securitisation company has an unallowable purpose if the purpose for which the securitisation company is a party to—

- (a) the capital market arrangement,
- (b) any related transaction, or
- (c) any transaction in pursuance of the capital market arrangement,

includes a purpose which is not amongst the business or other commercial purposes of the securitisation company.

(3) If one of the purposes for which a securitisation company is at any time a party to—

- (a) any capital market arrangement,
- (b) any related transaction in the case of any capital market arrangement, or
- (c) any transaction in pursuance of any capital market arrangement,

is a tax avoidance purpose, that purpose shall be taken to be a business or other commercial purpose of the securitisation company only where it is not the main purpose, or one of the main purposes, for which the company is party to the arrangements or transaction at that time.

(4) In this regulation—

“tax avoidance purpose” means any purpose that consists in securing a tax advantage for any other person;

“tax advantage” has the same meaning as in section 709(1) of ICTA (tax avoidance).

Companies to which these Regulations do not apply

Securitisation companies on 1st January 2007

13.—(1) These Regulations do not apply to a company which before the start of the first accounting period of the company beginning on or after 1st January 2007—

(5) 1993 c. 34. Section 92D was inserted by section 52 of, and paragraph 77 of Schedule 10 to, the Finance Act 2004 (c. 12).

(6) Section 92E was inserted by section 52 of, and paragraph 77 of Schedule 10 to, the Finance Act 2004.

- (a) is a securitisation company within section 83 of the Finance Act 2005 (application of accounting standards to securitisation companies)(7), or
- (b) is a company in relation to which the following conditions are met—
 - (i) it is party as debtor to a capital market investment,
 - (ii) securities representing that capital market investment are issued, and
 - (iii) the capital market investment is part of a capital market arrangement.

This is subject to paragraph (2).

(2) The company may elect by notice in writing to Her Majesty's Revenue and Customs, within 18 months of the end of that period, that these Regulations shall apply.

(3) An election under paragraph (2) is irrevocable.

Application of the Corporation Tax Acts

Corporation tax charge

14.—(1) The profit of a securitisation company to be brought into account for an accounting period for corporation tax purposes is the aggregate of—

- (a) the greater of—
 - (i) nil; and
 - (ii) the amount given by the formula—
$$RP - DS + D$$
, and
- (b) the amount specified in paragraph (3).

(2) In paragraph (1)—

RP is the amount of the retained profit of the securitisation company for the accounting period;
DS is the amount of any distribution received in that accounting period from another securitisation company which is party to the capital market arrangement where the distribution is made from that company's retained profit;

D is the greater of—

- (a) the amount equal to the aggregate of any dividends paid by the securitisation company in that and any previous accounting period, less—
 - (i) RP for the accounting period,
 - (ii) the aggregate of profits calculated under this regulation for previous accounting periods,
 - (iii) the aggregate of DS calculated under this regulation for previous accounting periods, and
 - (iv) the amount of any dividends paid out of profits arising in any previous accounting period in which these Regulations did not apply; and
- (b) nil.

(3) The specified amount is any credit that would be brought into account by the securitisation company in the accounting period in consequence of paragraph 12A of Schedule 9 to the Finance Act 1996 (transferee leaving group after replacing transferor as party to loan relationship)(8) or

(7) Section 83 has been amended by section 101(1), (2), (3), (4) and (6) and section 178 of, and Part 3(19) of Schedule 26 to, the Finance Act 2006.

(8) 1996 c. 8. Paragraph 12A was inserted by section 39 of, and paragraph 18 of Schedule 7 to, the Finance (No. 2) Act 2005 (c. 7).

paragraph 30A of Schedule 26 to the Finance Act 2002 (transferee leaving group after replacing transferor as party to derivative contract)(9).

(4) The amount of profit calculated under this regulation shall be brought into account for corporation tax purposes instead of any other amount that would fall to be brought into account.

Supplementary provision

Application, modification and non-application of provisions of the Corporation Tax Acts

15.—(1) In relation to a securitisation company, ICTA has effect as if it were subject to the following modification.

(2) In section 12 (basis of, and periods for, assessment)(10), in subsection (3) after paragraph (e) insert—

“(f) the company becoming or ceasing to be a securitisation company to which regulation 14 of the Taxation of Securitisation Companies Regulations 2006 applies.”.

16. Paragraphs (b) to (f) in section 209(2) (meaning of distribution)(11) of ICTA shall not apply in relation to any interest paid or other distribution made by a securitisation company.

17. For the purposes of Chapter 4 of Part 10 (group relief) of ICTA, a securitisation company shall not be treated as the member of any group or consortium.

18.—(1) Section 171 (transfers within a group: general provisions) of the Taxation of Chargeable Gains Act 1992(12) shall not apply if “company B” in subsection (1) of that section is a securitisation company.

(2) Section 179A (reallocation within group of gain or loss accruing under section 179) of that Act(13) shall not apply if “company C” in that section is a securitisation company.

19.—(1) Paragraph 2 of Schedule 9 to the Finance Act 1996 (loan relationships: special computational provisions: late interest)(14) shall not apply if the person standing in the position of a creditor as respects a loan relationship within that paragraph is a securitisation company.

(2) Paragraph 12 of that Schedule (continuity of treatment: groups etc)(15) shall not apply if the “transferee company” or “transferor company” in subparagraph (1) of that paragraph is a securitisation company.

20. Paragraph 28 of Schedule 26 to the Finance Act 2002 (derivative contracts: transactions within groups) shall not apply if the “transferee company” or “transferor company” in subparagraph (1) of that paragraph is a securitisation company.

(9) 2002 c. 23. Paragraph 30A was inserted by section 39 of, and paragraph 24 of Schedule 7 to, the Finance (No. 2) Act 2005.

(10) Section 12 was amended by paragraphs 3 and 7 of Schedule 9 to the Finance Act 1990 (c.29), paragraph 11(2) and (3) of Schedule 24 to the Finance Act 1996 (c. 8), section 196 of, and paragraph 1 of Schedule 41 to, the Finance Act 2003 (c. 14), section 42 of, and paragraph 20(2) and (3) of Schedule 9 to, the Finance (No. 2) Act 2005 (c. 22) and articles 13 and 14 of S.I. 2001/3629.

(11) Section 209 was amended by section 31 of the Finance (No. 2) Act 1992 (c. 48), section 87(1) to (3) of, and Schedule 29 Part VIII(12) to, the Finance Act 1995 (c. 4), paragraph 11 of Schedule 14 and paragraph 6(1), (2)(b) and (4) of Schedule 34 to the Finance Act 1996, section 40(9) and (11) and 86(1) of the Finance Act 2000 (c. 17), section 102(1) and (3) of the Finance Act 2002 (c. 23) and sections 34(1) and 326 of, and Schedule 42 Part 2(2) to, Finance Act 2004.

(12) 1992 c. 12. Section 171 has been relevantly amended by section 102 of, and paragraph 2 of Schedule 29 to, the Finance Act 2000 (c. 17).

(13) Section 179A was inserted by section 42(1) and (4) of the Finance Act 2002.

(14) Paragraph 2 of Schedule 9 was amended by section 82 of, and paragraphs 1 and 22 of Schedule 25 to, the Finance Act 2002 (c. 23), sections 178 and 216 of, and paragraphs 1 and 2 of Schedule 37 and part 3(14) of Schedule 43 to, the Finance Act 2003, sections 48, 281 and 284 of, and paragraph 2 of Schedule 8 and paragraphs 43 and 45 of Schedule 35 to, the Finance Act 2004 and sections 40 and 70 of, and paragraph 2 of Schedule 8 and part 2(9) of Schedule 11 to, the Finance (No. 2) Act 2005.

(15) Paragraph 12(1) was relevantly amended by section 102 of, and paragraph 44(1), (4) and (5) of Schedule 29 to, the Finance Act 2000, articles 92 and 94 of S.I. 2001/3629 and regulation 9 of S.I. 2004/2200.

21. Section 83 of the Finance Act 2005 (application of accounting standards to securitisation companies) shall not apply to a securitisation company.

Date

Two of the Lords Commissioners of Her
Majesty's Treasury