Corporation Tax Act 2009

2009 CHAPTER 4

PART 3

TRADING INCOME

CHAPTER 9

TRADE PROFITS: OTHER SPECIFIC TRADES

[F1 Banking companies

Textual Amendments

F1 Ss. 133A-133N and cross-heading inserted (with effect in accordance with s. 18(2) of the amending Act) by Finance (No. 2) Act 2015 (c. 33), **s. 18(1)**

133A Compensation payments: restriction of deductions

(1) In calculating the profits of a trade carried on by a company ("company A") no deduction is allowed for expenses incurred by the company if and so far as—

(a) the expenses are in respect of amounts of relevant compensation (see subsection (3)), and

(b) the disclosure condition is met in relation to the expenses (see section 133C).

(2) Subsection (1) does not apply to expenses which are excluded by section 133D.

(3) In relation to company A, "relevant compensation" means compensation which is paid or payable—

(a) to or for the benefit of a customer of company A in respect of relevant conduct (see subsection (6)) of company A, or

(b) to or for the benefit of a customer of a qualifying company in respect of relevant conduct of that qualifying company (but see subsection (4)).

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(4) Compensation paid or payable as mentioned in subsection (3)(b) is not relevant compensation so far as it is paid or payable under arrangements entered into between company A and the qualifying company on arm's length terms.

(5) "Qualifying company", in relation to company A, means a company which is associated with company A (see section 133L) at the time when the expenses in question are recognised for accounting purposes.

(6) For the purposes of this section conduct of a company is "relevant conduct" if the conduct occurs—

(a) on or after 29 April 1988, and

(b) at a time when the company is a banking company (see section 133E).

(7) For the purposes of subsection (1) it does not matter whether the compensation is paid, or to be paid, by company A or another person.

(8) In this section—

"compensation", "payment" and references to compensation "paid or payable" in respect of relevant conduct of a company, are to be read in accordance with section 133K;

"conduct" includes any act or omission;

"customer" has the meaning given by section 133J.

133B Companies affected by section 133A: amounts treated as received

(1) This section applies where a company incurs in an accounting period expenses which would, but for section 133A, be deductible in calculating the profits of a trade carried on by that company.

(2) An amount equal to 10% of the relevant sum is to be brought into account as a receipt in calculating the profits of the trade.

(3) The amount is treated as arising at the end of the accounting period.

(4) In this section "the relevant sum" means the total amount of the expenses which as a result of section 133A are not deductible in calculating the profits of the trade for the accounting period.

133C The disclosure condition

(1) In relation to expenses incurred by a company ("company A") in respect of amounts of relevant compensation, the "disclosure condition" is met if—

(a) a relevant document indicates that the company—

(i) is or has been, or

(ii) will become,

liable to pay compensation in respect of a particular matter and the relevant compensation can reasonably be regarded as relating to that matter, or

(b) a relevant document refers to disciplinary action taken or to be taken by a regulator in respect of a particular matter and the relevant compensation can reasonably be regarded as relating to that matter.

(2) A disclosure in a relevant document is to be disregarded for the purposes of paragraph (a) of subsection (1) if the disclosure is concerned with liability to pay

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compensation to or for the benefit of one (and only one) customer of the company concerned in respect of a single error in the conduct of the company concerned.

(3) In subsection (2) "the company concerned" means company A or a company which is associated with company A (see section 133L).

(4) For the purposes of subsection (1)(a) it does not matter whether the indication is express or implicit (or how it is expressed or conveyed) provided that it is reasonably clear from the relevant document that the company is or has been, or will become, liable to pay compensation in respect of the matter concerned.

(5) In this section "a relevant document" means—
- (a) relevant accounts,
- (b) a relevant statutory report, or
- (c) a relevant listing disclosure.

(6) For the purposes of this section the following are "relevant accounts" in relation to expenses incurred by company A—
- (a) company A's statutory accounts for a relevant period, and
- (b) relevant consolidated accounts for a relevant period.

(7) For the purposes of this section, any of the following is a "relevant statutory report" in relation to company A if the report in question is prepared for a relevant period—
- (a) any published report prepared by the directors of the company for the purposes of any provision of the legislation under which company A is registered or, as the case may be, established;
- (b) any published consolidated report prepared for such purposes, if the company is included in the consolidation.

(8) In this section "relevant listing disclosure" means a disclosure required—
- (a) by rules under section 73A of FISMA 2000, or
- (b) by virtue of a requirement imposed by or under a corresponding provision of the law of a territory outside the United Kingdom,

if the disclosure is made in the period of 5 years ending at the end of the period of account in which the expenses are recognised for accounting purposes.

(9) In this section "relevant period", in relation to expenses incurred by company A, means—
- (a) the period of account in which the expenses are recognised for accounting purposes, or
- (b) any period which begins not more than 5 years before, and ends not later than, the end of that period.

(10) In this section, in relation to a company—

"relevant compensation" has the meaning given by section 133A(3);

"statutory accounts" means accounts prepared for the purposes of any provision of the legislation under which the company is registered or, as the case may be, established;

"relevant consolidated accounts" means consolidated accounts prepared for any such purposes, if the company is included in the consolidation.

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133D Excluded expenses

(1) Expenses in respect of relevant compensation are excluded by this section if the compensation is in respect of—

(a) an administrative error,

(b) the failure of a computer or electronic system, or

(c) loss or damage which is wholly or mainly attributable to an unconnected third party.

(2) In subsection (1) "third party" means a person who is neither the company mentioned in section 133A(1) nor (if different) the company in respect of whose conduct the compensation is paid or payable (see section 133A(3)(b)).

(3) For the purposes of this section a third party ("TP") is an "unconnected third party" unless—

(a) TP was, at the time of the relevant actions, connected with the company mentioned in section 133A(1) or (if different) the company in respect of whose conduct the compensation is paid or payable, or

(b) in taking one or more of the relevant actions, TP was acting under arrangements with the company mentioned in paragraph (a) or (as the case may be) either of the companies mentioned in paragraph (a).

(4) In this section "the relevant actions" means the actions as a result of which the loss or damage is wholly or mainly attributable to TP (and references to actions or the taking of actions include failures to act).

(5) Section 1122 of CTA 2010 (meaning of "connected persons") applies for the purposes of this section, but subject to the following modification.

(6) Section 1122 has effect as if after subsection (8) there were inserted—

"(9) A person ("A") is connected with any person who is an employee of A or by whom A is employed.

(10) For the purposes of this section any director or other officer of a company is to be treated as employed by that company."

133E Meaning of "banking company"

(1) For the purposes of section 133A, a company is a "banking company"—

(a) at a time when it meets conditions A to D,

(b) at a time when it meets condition A and is a member of a partnership which meets conditions B to D, or

(c) if it is a building society.

In subsections (2) to (6), "the relevant entity" means the company or partnership.

(2) Condition A is that the company is not an excluded company (see section 133F).

(3) Condition B—

(a) in relation to any time on or after 1 December 2001, is that the relevant entity is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act);

(b) in relation to any time before that date, is that the relevant entity—

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(i) was at that time an authorised person under Chapter 3 of Part 1 of the Financial Services Act 1986 (persons authorised to carry on investment business),

(ii) was authorised under the Banking Act 1987, or

(iii) was entitled by virtue of the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218) to accept deposits (within the meaning of the Banking Act 1987) in the United Kingdom.

(4) Condition C is that—

(a) the relevant entity's activities include the relevant regulated activity described in the provision mentioned in section 133G(1)(a), or

(b) the relevant entity is an investment bank (see section 133H) whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in section 133G(1)(b) to (f).

(5) Condition D is that the relevant entity carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of trade.

(6) Where the relevant entity carries on activities outside the United Kingdom, Condition B is met—

(a) in relation to any time on or after 1 December 2001, if the relevant entity would be required to be an authorised person for the purposes of FISMA 2000 (see section 31 of that Act) in order to carry on any of those activities in the United Kingdom at that time;

(b) in relation to any time before that date, if in order to carry on those activities in the United Kingdom at that time the relevant entity—

(i) would have been required to be an authorised person under Chapter 3 of Part 1 of the Financial Services Act 1986 (persons authorised to carry on investment business), or

(ii) would have been required either to be authorised under the Banking Act 1987 or to be entitled by virtue of the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218) to accept deposits (within the meaning of the Banking Act 1987) in the United Kingdom.

(7) In this section "partnership" includes—

(a) a limited liability partnership, and

(b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,

and "member", in relation to a partnership, is to be read accordingly.

(8) For the meaning of "relevant regulated activity", see section 133G.

133F "Excluded company"

(1) This section gives the meaning of "excluded company" for the purposes of section 133E.

(2) A company is an "excluded company" at any time (in an accounting period) when the company is—

(a) an insurance company or an insurance special purpose vehicle;

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(b) a company which is a member of a group and does not carry on any relevant regulated activities otherwise than on behalf of an insurance company or an insurance special purpose vehicle which is a member of the group;

(c) a company which does not carry on any relevant regulated activities otherwise than as the manager of a pension scheme;

(d) an investment trust;

(e) a company which does not carry on any relevant regulated activities other than asset management activities;

(f) an exempt commodities firm;

(g) a company which does not carry on any relevant regulated activities otherwise than for the purpose of trading in commodities or commodity derivatives;

(h) a company which does not carry on any relevant regulated activities otherwise than for the purpose of dealing in contracts for differences—

(i) as principal with persons all or all but an insignificant proportion of whom are retail clients, or

(ii) with any other person to enable the company or that other person to deal in contracts for differences as principal with persons all or all but an insignificant proportion of whom are retail clients;

(i) a friendly society;

(j) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12));

(k) a building society.

F2(2A) **[** A company is also an "excluded company" at any time (in an accounting period) if—

(a) the company would fall within a relevant relieving provision but for one (and only one) line of business which it carries on,

(b) that line of business does not involve the relevant regulated activity described in the provision mentioned in section 133G(1)(a), and

(c) the company's activities in that line of business would not, on their own, result in it being **[**F3—

(i) in relation to a time on or after 1 January 2022, an FCA investment firm that meets the conditions in section 133H(1B);

(ii) in relation to a time before that date,**]**

both a 730k firm and a full scope investment firm.

(2B) For the purposes of subsection (2A) the "relevant relieving provisions" are paragraphs (b), (c), (e), (g) and (h) of subsection (2).**]**

(3) In this section "asset management activities" means activities which consist (or, if they were carried on in the United Kingdom, would consist) of any or all of the following—

(a) acting as the operator of a collective investment scheme (see subsection (5)),

(b) managing investments on a discretionary basis for clients none of which is a linked entity (see subsection (6)), and

(c) acting as an authorised corporate director.

(4) In subsection (2)(f) "exempt commodities firm" means—

F4(za) **[** in relation to a time on or after 1 January 2022, a commodity and emission allowance dealer;**]**

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(a) in relation to a time on or after 1 January 2014 **[**[F5]but before 1 January 2022**]**, an exempt IFPRU commodities firm, as defined by the FCA Handbook at that time,

(b) in relation to a time on or after 1 April 2013 but before 1 January 2014, an exempt BIPRU commodities firm, as defined by the PRA Handbook at that time,

(c) in relation to a time on or after 1 January 2007 but before 1 April 2013, an exempt BIPRU commodities firm, as defined by the Handbook of the Financial Services Authority at that time, and

(d) in relation to a time before 1 January 2007, an exempt BIPRU commodities firm as defined by the Handbook of the Financial Services Authority as in force on 1 January 2007.

(5) In subsection (3)(a) "operator of a collective investment scheme"—

(a) in relation to times on and after 25 February 2001, has the same meaning as in Part 17 of FISMA 2000 (see sections 235 and 237 of that Act);

(b) in relation to times before that date, has the same meaning as in the Financial Services Act 1986.

(6) In subsection (3)(b) "linked entity", in relation to a company ("C"), means—

(a) a member of the same group as C;

(b) a company in which a company which is a member of the same group as C has a major interest, or

(c) a partnership the members of which include an entity—

(i) which is a member of the same group as C, and

(ii) whose share of the profits or losses of a trade carried on by the partnership for an accounting period of the partnership any part of which falls within the accounting period mentioned in the opening words of subsection (2) is at least a 40% share (see Part 17 for provisions about shares of partnership profits and losses).

(7) In this section—

[[F6]"730k firm"—

(a) in relation to any time on or after 1 January 2014 **[**[F7]but before 1 January 2022**]**, means an IFPRU 730k firm,

(b) in relation to any time before **[**[F8]1 January 2014**]**, means a BIPRU 730k firm;**]**

"authorised corporate director"—

(a) in relation to any time on or after 1 April 2013, has the meaning given by the FCA Handbook at that time;

(b) in relation to any time before 1 April 2013, has the meaning given by the FCA Handbook as in force on 1 April 2013;

[[F9]"BIPRU 730k firm" and "full scope BIPRU investment firm" have the same meaning as in subsections (2) to (4) of section 133H;**]**

[[F10]"commodity and emission allowance dealer" has the meaning given by the FCA Handbook at the time in question;**]**

"contract for differences" has the meaning given by section 582;

"the FCA Handbook" means the Handbook made by the Financial Conduct Authority under FISMA 2000;

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[[F10]"FCA investment firm" has the meaning given by section 143A of FISMA 2000;**]**

"friendly society" means a registered friendly society or an incorporated friendly society;

[[F9]"full scope investment firm"—

(a) in relation to any time on or after 1 January 2014 **[**[F11]but before 1 January 2022**]**, means a full scope IFPRU investment firm,

(b) in relation to any time before **[**[F12]1 January 2014**]**, means a full scope BIPRU investment firm;**]**

"group" has the same meaning as in Part 7A of CTA 2010 (see section 269BD of that Act);

[[F9]"IFPRU 730k firm" and "full scope IFPRU investment firm" have the meaning given by the FCA Handbook at the time in question;**]**

"incorporated friendly society" means a society incorporated under the Friendly Societies Act 1992;

"insurance company" has the meaning given by section 133I;

"insurance special purpose vehicle" has the meaning given by section 139 of FA 2012;

"major interest" has the same meaning as in Part 5 (see section 473);

"partnership" has the same meaning as in section 133E;

"the PRA Handbook", means the Handbook made by the Prudential Regulation Authority under FISMA 2000;

"registered friendly society" has the same meaning as in the Friendly Societies Act 1992 (and includes any society that as a result of section 96(2) of the Friendly Societies Act 1992 is treated as a registered friendly society);

"relevant regulated activity" has the meaning given by section 133G;

"retail client"—

(a) in relation to any time on or after 1 April 2013, has the meaning given by the FCA Handbook at that time;

(b) in relation to any time before 1 April 2013, has the meaning given by the FCA Handbook as in force on 1 April 2013.

Textual Amendments

F2 S. 133F(2A)(2B) inserted (retrospective to 18.11.2015) by Finance Act 2016 (c. 24), s. 56(1)**(2)**

F3 S. 133F(2A)(c)(i)(ii) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(2)**

F4 S. 133F(4)(za) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(3)(a)**

F5 Words in s. 133F(4)(a) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(3)(b)**

F6 Words in s. 133F(7) inserted (retrospective to 18.11.2015) by Finance Act 2016 (c. 24), s. 56(1)**(3)**

F7 Words in s. 133F(7) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(4)(a)(i)**

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F8 Words in s. 133F(7) substituted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(4)(a)(ii)**

F9 Words in s. 133F(7) inserted (retrospective to 18.11.2015) by Finance Act 2016 (c. 24), s. 56(1)**(4)**

F10 Words in s. 133F(7) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(4)(c)**

F11 Words in s. 133F(7) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(4)(b)(i)**

F12 Words in s. 133F(7) substituted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **3(4)(b)(ii)**

133G Meaning of "relevant regulated activity"

(1) In sections 133E and 133F "relevant regulated activity" means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544)—

(a) article 5 (accepting deposits);

(b) article 14 (dealing in investments as principal);

(c) article 21 (dealing in investments as agent);

(d) article 25 (arranging deals in investments);

F13 **[** (da) article 25DA (operating an organised trading facility), but only where dealing on own account in relation to sovereign debt instruments for which there is no liquid market (within the meaning of the Handbook made by the Financial Conduct Authority under FISMA 2000);**]**

(e) article 40 (safeguarding and administering investments);

(f) article 61 (regulated mortgage contracts).

(2) In determining whether an activity carried on at any time before 1 December 2001 was at that time a relevant regulated activity, it is to be assumed that FISMA 2000 and the order mentioned in subsection (1) were in force in the form in which they had effect on 1 December 2001.

Textual Amendments

F13 S. 133G(1)(da) inserted (5.4.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(4)(11), **4**

133H Investment bank

(1) This section gives the meaning of "investment bank" for the purposes of section 133E; and in this section "the relevant entity" has the same meaning as in subsections (2) to (6) of that section.

F14 **[** (1A) At any time on or after 1 January 2022, the relevant entity is an investment bank if—

(a) it is an FCA investment firm that meets the conditions in subsection (1B), or

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(b) it is designated by the Prudential Regulation Authority under Article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556) (dealing in investments as principal: designation by PRA).

(1B) An FCA investment firm meets the conditions in this subsection if it has a permanent minimum capital requirement of £750,000 and is not—

(a) a limited activity firm,

(b) a limited licence firm,

(c) a local firm, or

(d) a matched principal trading firm.

(1C) In subsection (1B)—

"limited activity firm" means an investment firm that—

(a) deals on own account only for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order; or

(b) meets all the following conditions—

(i) it does not hold client money or securities;

(ii) it undertakes only dealing on own account;

(iii) it has no external customers; and

(iv) its execution and settlement transactions take place under the responsibility of a clearing institution and are guaranteed by that clearing institution;

"limited licence firm" means an investment firm that is not authorised to provide the investment services and activities of—

(a) dealing on own account; or

(b) underwriting of financial instruments or placing of financial instruments on a firm commitment basis;

"local firm" means a firm—

(a) dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or

(b) dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets;

"matched principal trading firm" means an investment firm that executes investors' orders for financial instruments and meets the following conditions—

(a) the firm only holds financial instruments for its own account as a result of its failure to match investors' orders precisely;

(b) the total market value of all such positions is no more than 15% of the firm's initial capital;

(c) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

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(1D) In determining, for the purposes of subsection (1B), whether an FCA investment firm has a permanent minimum capital requirement of £750,000, any transitional provision in the FCA Handbook is to be disregarded.

(1E) In subsections (1A) to (1D), the following terms have the meaning given by the FCA Handbook—

"dealing on own account"

"financial instrument";

"initial capital";

"investment firm";

"market value";

"permanent minimum capital requirement".**]**

(2) At any time on or after 1 January 2014 **[**[F15]but before 1 January 2022**]**, the relevant entity is an investment bank if—

(a) it is both an IFPRU 730k firm and a full scope IFPRU investment firm, or

(b) it is designated by the Prudential Regulation Authority under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556) (dealing in investments as principal: designation by PRA).

(3) At any time on or after 1 January 2007 but before 1 January 2014, the relevant entity was an investment bank if it was both a BIPRU 730k firm and a full scope BIPRU investment firm.

(4) At any time before 1 January 2007, the relevant entity was an investment bank if it would have been both a BIPRU 730k firm and a full scope BIPRU investment firm if the Handbook of the Financial Services Authority in force on 1 January 2007 had been in force at that earlier time.

(5) In subsections (2) to (4)—

"IFPRU 730k firm" and "full scope IFPRU investment firm" have the meaning given by the FCA Handbook at the time in question;

"BIPRU 730k firm" and "full scope BIPRU investment firm"—

(a) in relation to any time on or after 1 April 2013 have the meaning given by the PRA Handbook at that time;

(b) in relation to any time on or after 1 January 2007 but before 1 April 2013, have the meaning given by the Handbook of the Financial Services Authority at that time;

(c) in relation to any time before 1 January 2007, have the meaning given by the Handbook of the Financial Services Authority as in force on 1 January 2007.

(6) If the relevant entity would at any time be an investment bank under subsection **[**[F16](1A)(a),**]** (2)(a), (3) or (4) by virtue of activities carried on in the United Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom, the relevant entity is to be treated for the purposes of section 133E as being an investment bank.

(7) In this section—

"the FCA Handbook" means the Handbook made by the Financial Conduct Authority under FISMA 2000;

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[[F17]"FCA investment firm" has the meaning given by section 143A of FISMA 2000;**]**

"the PRA Handbook" means the Handbook made by the Prudential Regulation Authority under FISMA 2000.

Textual Amendments

F14 S. 133H(1A)-(1E) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **5(2)**

F15 Words in s. 133H(2) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **5(3)**

F16 Word in s. 133H(6) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **5(4)**

F17 Words in s. 133H(7) inserted (5.4.2022 with application from 1.1.2022) by The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 (S.I. 2022/286), regs. 1(2)(3), **5(5)**

133I Meaning of "insurance company"

(1) For the purposes of section 133F a person who carries on the activity of effecting or carrying out contracts of insurance is an "insurance company" if—

(a) the person has permission under Part 4A of FISMA 2000 to carry on that activity,

[F18](b) . . . . . .

[F19](c) . . . . . .

(2) In relation to times in the period beginning with 1 December 2001 and ending with 31 March 2013, the reference in subsection (1)(a) to Part 4A of FISMA 2000 is to be read as a reference to Part 4 of that Act

(3) In relation to times before 1 December 2001, this section has effect as if the following were substituted for subsection (1)—

"(1) For the purposes of section 133F a person who carries on the activity of effecting or carrying out contracts of insurance is an "insurance company" if the person is—

(a) authorised under section 3 or 4 of the Insurance Companies Act 1982, or

(b) an EC company within the meaning of the Insurance Companies Act 1982 which, by virtue of paragraph 1 or 8 of Schedule 2F to that Act, was able to carry on direct insurance business through a branch in the United Kingdom or provide insurance in the United Kingdom."

Textual Amendments

F18 S. 133I(1)(b) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **16(2)** (with regs. 39-41, 45); 2020 c. 1, Sch. 5 para. 1(1)

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F19 S. 133I(1)(c) omitted (31.12.2020) by virtue of The Taxes (Amendments) (EU Exit) Regulations 2019 (S.I. 2019/689), regs. 1, **16(2)** (with regs. 39-41, 45); 2020 c. 1, Sch. 5 para. 1(1)

133J Meaning of "customer"

(1) For the purposes of sections 133A and 133C, a person ("P") is a "customer" in relation to a company ("company A") if—

(a) P uses, has used or may have contemplated using a financial service provided by company A, or

(b) has relevant rights or interests in relation to a financial service provided by company A.

(2) In subsection (1) "financial service" means a service provided—

(a) in carrying on regulated activities,

(b) in communicating, or approving the communication by others of, invitations or inducements to engage in investment activity, or

(c) in providing relevant ancillary services (if company A is an investment firm or credit institution).

(3) P has a "relevant right or interest" in relation to any service if P has a right or interest—

(a) which is derived from, or is otherwise attributable to, the use of the service by another person, or

(b) which may be adversely affected by the use of the service by persons acting on P's behalf or in a fiduciary capacity in relation to P.

(4) If company A is providing a service as a trustee, the persons who are, have been, or may have been, beneficiaries of the trust are to be treated as persons who use, have used, or may have contemplated using, the service.

(5) A person who deals with company A in the course of company A providing a service is to be treated as using the service.

(6) In this section—

"credit institution" has the meaning given by section 1H(8) of FISMA 2000;

"engage in investment activity" has the meaning given in section 21 of FISMA 2000;

"investment firm" has the same meaning as in FISMA 2000 (see section 424A of that Act);

"regulated activities" has the same meaning as in FISMA 2000 (see section 22 of that Act);

"relevant ancillary services" means has the meaning given by section 1H(8) of FISMA 2000.

133K "Compensation" and related expressions

(1) In sections 133A to 133D references to compensation which is paid or payable "in respect of" relevant conduct include compensation which is paid (or to be paid)—

(a) in connection with a claim by the customer for compensation in respect of the conduct, or

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(b) in circumstances where there is reason to suspect that company A may (or might in the absence of the payment) be or become liable to pay compensation in respect of relevant conduct—

(i) to the customer, or

(ii) in one or more of a class of cases which includes the customer's case.

(2) In sections 133A to 133D and this section "compensation" includes any form of redress, whether monetary or non-monetary, and accordingly includes interest.

References in those sections to "payment" are to be interpreted accordingly.

(3) In subsection (1)—

"claim" includes any claim or request, however made;

"customer" has the meaning given by section 133J;

"relevant conduct" is to be interpreted in accordance with section 133A(6).

133L Associated companies

(1) For the purposes of sections 133A and 133C a company ("company B") is associated with another company ("company A") at a time ("the relevant time") if any of the following 5 conditions is met.

(2) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.

(3) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.

(4) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.

(5) The fourth condition is that—

(a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition (see subsection (7)), and

(b) at the relevant time the third company has a major interest in company B.

(6) The fifth condition is that—

(a) there is a connection (see subsection (9)) between company A and a third company for the accounting period of company A in which the relevant time falls, and

(b) at the relevant time the third company has a major interest in company B.

(7) In this section, the financial results of any two companies for any period meet the "consolidation condition" if—

(a) they are required to be comprised in group accounts,

(b) they would be required to be comprised in group accounts but for the application of an exemption, or

(c) they are in fact comprised in such accounts.

(8) In subsection (7), "group accounts" means accounts prepared under—

(a) section 399 of the Companies Act 2006, or

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(b) any corresponding provision of the law of a territory outside the United Kingdom.

(9) Sections 466 to 471 (companies connected for accounting period) apply for the purposes of this section.

(10) In this section "major interest" has the same meaning as in Part 5 (see section 473).

133M Application of sections 133A and 133B in relation to corporate partner

(1) If a firm carries on a trade and any partner in the firm ("the corporate partner") is within the charge to corporation tax, this section applies in determining the profits of the trade, in relation to the corporate partner, in accordance with section 1259(3) or (4).

(2) No deduction is allowed for expenses incurred by the firm if and so far as section 133A would prevent the expenses from being deductible if the firm were, and at all relevant times had been, a company.

(3) In its application for the purposes of subsection (2), section 133A is to be read subject to subsections (4) to (6).

(4) Section 133A(3)(b) is to be disregarded.

(5) Conduct of the firm is "relevant conduct" if the conduct occurs—

(a) on or after 29 April 1988, and

(b) at a time when—

(i) the corporate partner is for the purposes of section 133A a banking company, and

[[F20](ii) the firm would not (if references in section 133F(2) and (3) to companies included firms) be an excluded company for the purposes of section 133E.**]**

(6) The disclosure condition in section 133C may be met by a relevant document relating to the liability of the corporate partner (as well as by a relevant document relating to the liability of the firm).

(7) Where in any accounting period of the firm (as defined by section 1261) the firm incurs expenses which but for section 133A (as read with subsections (2) to (6)) would be deductible in calculating the profits of the trade, the profits of the firm's trade are to be determined as if the references in section 133B to a company were a reference to the firm.

Textual Amendments

F20 S. 133M(5)(b)(ii) substituted (retrospective to 18.11.2015) by Finance Act 2016 (c. 24), s. 56(5)**(6)**

133N Powers to amend

(1) The Treasury may by regulations make such amendments of sections 133A to 133L as they consider appropriate in consequence of—

(a) any change made to, or replacement of, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) or the Financial

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Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556) (or any replacement);

(b) any change made to, or replacement of, the FCA Handbook or the PRA Handbook (or any replacement);

(c) any regulatory requirement, or change to any regulatory requirement, imposed by EU legislation, or by or under any Act (whenever adopted, enacted or made).

(2) The Treasury may by regulations—

(a) amend sections 133A(1) and 133C for the purpose of varying the class of expenses to which section 133A(1) applies;

(b) amend section 133D for the purpose of adding cases to those for the time being listed in subsection (1) of that section;

(c) amend section 133D for any other purpose;

(d) amend any of sections 133E to 133I;

(e) amend section 133M.

(3) Regulations under this section may include transitional provision.

F21 **[** Regulations under this section made on or before 30 June 2022 may have retrospective (3A) effect in relation to any time on or after 1 January 2022.**]**

(4) A statutory instrument containing only regulations under subsection (1) or (2)(b) is subject to annulment in pursuance of a resolution of the House of Commons.

(5) Any other statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

(6) In this section—

"the FCA Handbook" means the Handbook made by the Financial Conduct Authority under FISMA 2000 (as that Handbook has effect from time to time);

"the PRA Handbook" means the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook has effect from time to time).**]**

Textual Amendments

F21 S. 133N(3A) inserted (10.6.2021) by Finance Act 2021 (c. 26), **s. 134(1)**

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

– Blanket amendment words substituted by S.I. 2011/1043 art. 34

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

– s. 322(2A)(zb) inserted by 2016 c. 24 s. 73(5)
– s. 1058B(5)(ea) inserted by 2023 c. 20 Sch. para. 57
– s. 1094(2A)-(2C) inserted by 2012 c. 14 Sch. 3 para. 13(3)
– s. 1106(4A)-(4C) inserted by 2012 c. 14 Sch. 3 para. 14(3)