

**2016 No. 364**

**INCOME TAX**

**CAPITAL GAINS TAX**

**The Individual Savings Account (Amendment No. 2)  
Regulations 2016**

<i>Made</i> - - - -	<i>14th March 2016</i>
<i>Laid before the House of Commons</i>	<i>15th March 2016</i>
<i>Coming into force</i> - -	<i>6th April 2016</i>

The Treasury make these Regulations exercising the powers in sections 694 to 699 and 701 of the Income Tax (Trading and Other Income) Act 2005(a) and section 151 of the Taxation of Chargeable Gains Act 1992(b).

**Citation and commencement**

1. These Regulations may be cited as the Individual Savings Account (Amendment No. 2) Regulations 2016 and come into force on 6th April 2016.

**Amendment of the Individual Savings Account Regulations 1998**

2. The Individual Savings Account Regulations 1998(c) are amended by regulations 3 to 17.

3. In regulation 2(1)(a) (interpretation)—

(a) in the definition of “account investment”, for “or a cash component, as the case may be, within the meaning of regulation 7 or 8” substitute “, a cash component or an innovative finance component, as the case may be, within the meaning of regulation 7, 8 or 8A”;

(b) at the appropriate places insert—

““article 36H agreement” is to be construed in accordance with article 36H(4) of the Regulated Activities Order 2001 and is an agreement entered into by an account investor as lender with a borrower with the facilitation of an operator and for the purposes of regulation 8A(2) includes such an agreement notwithstanding that, after it is entered into, the operator assumes the rights of the lender under it;”;

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(a) 2005 c. 5; sections 694 and 701 were amended by section 40 of the Finance Act 2011 (c. 11), sections 695 and 696 were amended by paragraphs 131 and 132 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 (c. 11), section 701(5) was inserted by section 40 of the Finance Act 2008 (c. 9).

(b) 1992 c.12; section 151 was amended by section 85 of the Finance Act 1993 (c. 34), section 64(2) of the Finance Act 1995 (c. 4), paragraph 436 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 and section 40(7) of the Finance Act 2011.

(c) S.I. 1998/1870. Relevant amending instruments are: S.I. 2001/908, S.I. 2001/3629, S.I. 2002/1974, S.I.2002/3158, S.I. 2004/2996, S.I. 2007/2119, S.I. 2008/704, S.I. 2010/2957, S.I. 2011/1780, S.I. 2012/1871, S.I. 2013/472, S.I.2013/605, S.I. 2014/654, S.I. 2014/1450, S.I. 2015/608, S.I. 2015/869 and S.I. 2016/16.

““borrower” is to be construed in accordance with article 36H(9) of the Regulated Activities Order 2001;”;

““interim permission” is to be construed in accordance with Chapter 4 of Part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(a);”;

““innovative finance account” has the meaning given in regulation 4(1ZA);”;

““lender” is to be construed in accordance with article 36H(9) of the Regulated Activities Order 2001;”;

““operator” means a person who has permission (other than an interim permission) under Part 4A of FISMA 2000 to carry on the regulated activity specified in article 36H(1) of the Regulated Activities Order 2001;”;

““outstanding principal balance” means, in relation to an article 36H agreement, the amount of capital and interest the borrower owes the account investor at any time;”;

““qualifying investments for an innovative finance component” has the meaning given in regulation 8A;” and

““Regulated Activities Order 2001” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(b);”.

**4.** In regulation 2D (regulations that do not apply to junior ISA accounts), after “7(2)(h),” insert “8A;”.

**5.** In regulation 4 (general conditions for accounts and subscriptions to accounts)—

(a) in paragraph (1), for “and in respect of which—” substitute “which is an innovative finance account or in respect of which—”;

(b) after paragraph (1), insert—

“(1ZA) An innovative finance account is an account in respect of which—

(a) the conditions in paragraphs (1A)(a) and (ca); (1B)(ba) to (e); (5); (6)(a), (e) and (g) are fulfilled;

(b) in relation to cash held in an account, the conditions in paragraphs (6)(f) and (fa) and (7) are fulfilled; and

(c) the application to open the account is made in accordance with regulation 12.”;

(c) in paragraph (1A)—

(i) in sub-paragraph (a), for “or a cash account” substitute “, a cash account or an innovative finance account”;

(ii) after sub-paragraph (c), insert—

“(ca) an innovative finance account is made up of a single innovative finance component only;”;

(d) in paragraph (1B), after sub-paragraph (b), insert—

“(ba) except for a subscription made in accordance with regulation 5D(2)(a)(iv), a qualifying individual who is 18 or over may only subscribe to a single innovative finance account in a particular year;” and

(e) in paragraph (6)(b), after “regulation 8(2)(a),(b) or (e)” insert “and qualifying investments for an innovative finance component”.

**6.** In regulation 4A (repair of certain incompatible accounts and excess subscriptions - accounts other than junior ISA accounts)—

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(a) S.I. 2013/1881. Relevant amending instruments are: S.I. 2014/208, S.I. 2014/506, S.I. 2014/835, S.I. 2014/1446, S.I. 2014/2632 and S.I. 2015/910.

(b) S.I. 2001/544. Relevant amending instruments are: S.I. 2013/1881, S.I. 2014/366 and the Financial Services and Markets Act 2000 (Regulated Activities)(Amendment) Order 2016.

- (a) in paragraph (1), in the paragraph under the heading “First Condition”—
  - (i) for “or (b)” substitute “, (b) or (ba)”;
  - (ii) for “and a single stocks and shares account” substitute “, a single stocks and shares account and a single innovative finance account”;
- (b) in paragraph (1), in the paragraph under the heading “Second Condition”, for “or (b)” substitute “, (b) or (ba)”;
- (c) in paragraph (3)(b), for “or (b)” substitute “, (b) or (ba)”.

**7. In regulation 5DD (defaulted investment payment), for the text of the regulation substitute—**

“A defaulted investment payment occurs where a payment is made (otherwise than by accretion to an account) by way of compensation in respect of poor performance, loss (in whole or in part), depreciation or risk of depreciation of an investment (“defaulted investment”)—

- (a) described in regulation 7, held in a stocks and shares account (whether or not the defaulted investment continues to be held in the account at the time of the payment); or
- (b) described in regulation 8A, held in an innovative finance account (whether or not the defaulted investment continues to be held in the account at the time of the payment).”.

**8. In regulation 5DDA (additional permitted subscription to an account other than a junior ISA account)—**

- (a) in paragraph (2)(e)—
  - (i) at the end of sub-paragraph (iii), omit “and”;
  - (ii) at the end of sub-paragraph (iv), for the full-stop substitute “; and”; and
  - (iii) after sub-paragraph (iv), insert—
    - “(v) in the case of an innovative finance account, paragraph (iv) shall apply but with the words from “title to” to “and another.” being substituted by “those assets remain under the management of the deceased’s account manager.”;
- (b) after paragraph (3), insert—
  - “(3A) In respect of an innovative finance account, for the purposes of paragraph (3), the value of the account at the date of the deceased’s death is the combined value of the outstanding principal balance under those article 36H agreements in respect of which payments are due to be made to the account manager of the account investor and cash deposited by the account investor under regulations 6(4) to (6).”; and
- (c) in paragraph (11)(b), after (ii) insert—
  - “(iii) the right to exercise the rights of the lender in respect of the outstanding principal balance under an article 36H agreement; and”.

**9. In regulation 5DDB (flexible account)—**

- (a) in paragraph (1), after “replacement subscription of a cash amount” insert “or qualifying investments for a stocks and shares component within regulation 7(2)(h)”;
- (b) in paragraph (2), for “4(1B)(a) and (b)” substitute “4(1B)(a), (b) and (ba)”.

**10. In regulation 5DF(1)(b)(iii) (information required by regulation 5D), after “stocks and shares account” insert “or innovative finance account”.**

**11. In regulation 6 (general investment rules)—**

- (a) in paragraph (1), for “All transactions” substitute “Subject to paragraph (1ZB), all transactions”;
- (b) after paragraph (1ZA), insert—

“(1ZB) Where an investment is made of a kind described in regulation 8A(2)(a), the amount of the payments made pursuant to the article 36H agreement must be such as might reasonably be expected to be made under such an agreement entered into in the open market.”; and

(c) after paragraph (2), insert—

“(2A) Where the right to exercise the rights of the lender under an article 36H agreement is sold or otherwise transacted, that sale or transaction must be made at a price for which the investment might reasonably be expected to be sold or otherwise transacted, as the case may be, in the open market.”.

12. After regulation 8 (qualifying investments for a cash component), insert—

**“Qualifying investments for an innovative finance component**

**8A.**—(1) This regulation specifies the kind of investments (“qualifying investments for an innovative finance component”) which may be purchased, made or held under an innovative finance account.

(2) Qualifying investments for an innovative finance component to which paragraph (1) refers are—

- (a) payments by a borrower made under an article 36H agreement where the conditions in paragraph (3) are met;
- (b) payments by an assignee for the right to exercise the rights of the lender under an article 36H agreement where the conditions in paragraph (3)(c) and (d) are met;
- (c) payments by a novatee in respect of the novation of an article 36H agreement where the conditions in paragraph (3)(c) and (d) are met;
- (d) cash deposited in accordance with regulation 6(4) to (6); and
- (e) payments by way of compensation in respect of a matter described in regulation 5DD in relation to an investment specified in this regulation.

(3) The conditions in this paragraph are—

- (a) the payment is a payment of interest or capital or both;
- (b) the payment is made to the account manager of the account investor;
- (c) the article 36H agreement is made on genuine commercial terms; and
- (d) the article 36H agreement is not part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax.”.

13. In regulation 10(2) (qualifying individuals who may invest under an account that is not a junior ISA account)—

- (a) in sub-paragraph (a), after “stocks and shares account” insert “or innovative finance account”;
- (b) in sub-paragraph (b), for “5D(2)(a)(i), (ia), (iv) or (v)” substitute “5D(2)(a)(ia) or (iv)”;
- (c) in sub-paragraph (c), for “5D(2)(a)(ia) or (iv)” substitute “5D(2)(a)(i), (ia), (iv) or (v)”;
- (d) after sub-paragraph (c), insert—

“(cza)who, except for a subscription made in accordance with regulation 5D(2)(a)(ia) or (iv), in the case of an innovative finance account, has not subscribed and will not subscribe, to any other innovative finance account, in the year in which the subscription is made;”.

14. In regulation 12(3) (conditions for application to open an account that is not a junior ISA account)—

- (a) in sub-paragraph (a), for “or cash account” substitute “, cash account or innovative finance account”;
- (b) in sub-paragraph (d), for “5D(2)(a)(i), (ia), (iv) or (v)” substitute “5D(2)(a)(ia) or (iv)”;

- (c) in sub-paragraph (e), for “5D(2)(a)(iia) or (iv)” substitute “5D(2)(a)(i), (iia), (iv) or (v)”;  
and
- (d) after sub-paragraph (e), insert—
  - “(f) in the case of an innovative finance account, except for a subscription made in accordance with regulation 5D(2)(a), (iia) or (iv), the applicant—
    - (i) has not subscribed, and will not subscribe, to any other innovative finance account, in the year to which paragraph (2) refers, and
    - (ii) will not subscribe to any other innovative finance account, in each successive year following that year in which the declaration has effect;”.

**15. In regulation 14 (account manager qualifications and Board’s approval)—**

- (a) in paragraph (2)(b)(i)—
  - (i) after “permission”, insert “(other than an interim permission)”;
  - (ii) for “37”, substitute “36H, 37, 39G”; and
- (b) in paragraph (3)(a), for “or both” substitute “or innovative finance accounts only, or any combination of such accounts”.

**16. In regulation 21 (transfers relating to accounts other than junior ISA accounts)—**

- (a) in paragraph (4)—
  - (i) at the end of sub-paragraph (a), omit “or”;
  - (ii) after sub-paragraph (b), insert—
    - “or
    - (c) an innovative finance account (if the account investor is 18 years of age or over);”;
- (b) in paragraph (4C)—
  - (i) at the end of sub-paragraph (a), omit “or”;
  - (ii) after sub-paragraph (b), insert—
    - “or
    - (c) an innovative finance account to an innovative finance account;”;
- (c) in paragraph (4DA)—
  - (i) after sub-paragraph (c), insert—
    - “(ca) an innovative finance account (whether or not in a bulk transfer of accounts) is transferred to an innovative finance account held with the transferee immediately before the time when the transfer is made;”;
  - (ii) in sub-paragraph (d), after “stocks and shares account” insert “or an innovative finance account”;
  - (iii) at the end of sub-paragraph (d), omit “or”;
  - (iv) in sub-paragraph (e), after “cash account” insert “or an innovative finance account”;
  - (v) at the end of sub-paragraph (e), omit the full-stop; and
  - (vi) after sub-paragraph (e), insert—
    - “; or
    - (f) an innovative finance account is transferred (otherwise than in a bulk transfer of accounts) to a cash account or a stocks and shares account held with the transferee immediately before the time when the transfer is made.”;
- (d) in paragraph (4DB), for “(4DA)(b) or (c)” substitute “(4DA)(b), (c), or (ca)”;
- (e) in paragraph (6)(b)(i), for “or stocks and shares account” substitute “, stocks and shares account or innovative finance account”.

**17. In regulation 31 (returns of information by account manager)—**

- (a) in paragraph (3)—
  - (i) in sub-paragraph (b)(ii), at the beginning insert “in relation to a cash account or stocks and shares account.”;
  - (ii) in sub-paragraph (c)(i), for “or stocks and shares account” substitute “, a stocks and shares account or an innovative finance account”;
  - (iii) after sub-paragraph (c), insert—
    - “; and
    - (d) in relation to an innovative finance account comprising investments of the kind specified at regulation 8A(2)(a), the aggregate of the amounts set out at sub-paragraphs (i) and (ii) —
      - (i) the outstanding principal balance as at 5th April in that year, or the date on which an account manager ceases to act or qualify as an account manager, under those article 36H agreements in respect of which payments are due to be made to the account manager; and
      - (ii) the amount of cash held in the account as at 5th April in that year, or the date on which an account manager ceases to act or qualify as an account manager; and”;
- (b) in paragraph (4)—
  - (i) at the end of sub-paragraph (c), for the full-stop substitute “; and”; and
  - (ii) after sub-paragraph (c), insert—
    - “(d) the amount at the end of the year or part of the year for which the return is made of account investments held under innovative finance components, by him or a nominee for him on behalf of account investors, under all the accounts in respect of which he acted as account manager in that year or part of a year, with separate values for—
      - (i) cash, and
      - (ii) the outstanding principal balance under those article 36H agreements in respect of which payments are due to be made to the account manager.”; and
- (c) in paragraph (7)—
  - (i) after sub-paragraph (a)(v), insert—
    - “(vi) all innovative finance accounts; and”;
  - (ii) after sub-paragraph (b)(iia), insert—
    - “(iib) to innovative finance components of accounts;”; and
  - (iii) in the full out words at the end of the paragraph, for “In the case” substitute “In relation to this paragraph (7), in the case”.

### **Amendment of the Individual Savings Account (Amendment) Regulations 2016**

- 18.** The Individual Savings Account (Amendment) Regulations 2016(a) are amended as follows.
- 19.** Regulation 1.—(1) is to be renumbered as 1.
- 20.** In regulation 9(a), for “sub paragraphs” substitute “sub-paragraphs”.
- 21.** In regulation 16 —
  - (a) in paragraph (1), for “paragraph”, wherever it occurs, substitute “sub-paragraph”; and
  - (b) in paragraph (2)(b)(iii), for “insert as a new sub-paragraph (iia)” substitute “after sub-paragraph (ii) insert”.

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(a) S.I. 2016/16.

14th March 2016

Two of the Lords Commissioners of Her Majesty's Treasury

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These regulations amend the Individual Savings Account Regulations 1998 (S.I.1998/1870) (“the ISA regulations”) and the Individual Savings Account (Amendment Regulations) 2016 (S.I. 2016/16).

These regulations provide for a new type of Individual Savings Account (“ISA”), the innovative finance account, which enables interest and gains received by an account investor in respect of an article 36H agreement (defined in regulation 3) to be free of tax.

They also make provision for flexible accounts, provided for under the Individual Savings Account (Amendment) Regulations 2016 (S.I. 2016/16), to allow replacement subscriptions using certain types of shares.

Regulation 3 amends regulation 2 of the ISA regulations relating to interpretation.

Regulation 5 amends regulation 4 of the ISA regulations to make provision relating to general conditions for ISA accounts and subscriptions to those accounts for an innovative finance account.

Regulation 9 amends regulation 5DDB of the ISA regulations relating to flexible accounts so that the terms and conditions of those accounts can allow investors to use certain types of employee share scheme shares (rather than cash) to replace sums they have withdrawn from their account earlier in a tax year, without those shares counting towards the annual overall subscription limit for the year.

Regulation 12 inserts new regulation 8A into the ISA regulations to make provision relating to qualifying investments which may be purchased, made or held under an innovative finance account. These include payments received by an account investor in respect of an article 36H agreement.

Regulation 13 amends regulation 10 of the ISA regulations to make provision for qualifying individuals who may invest under an innovative finance account and provides for cases in which it is possible for a holder of an innovative finance account (in the same way as another ISA account holder) to subscribe to more than one cash account, stocks and shares account or innovative finance account in a tax year.

Regulation 14 amends regulation 12 of the ISA regulations to make provision for an application to open an innovative finance account and also provides for cases in which it is possible for a holder of an innovative finance account (in the same way as another ISA account holder) to subscribe to more than one ISA account in a tax year.

Regulation 15 amends regulation 14 of the ISA regulations to make provision for the qualifications of an account manager to include a permission (other than an interim permission), under Part 4A of the Financial Services and Markets Act 2000 (c. 8), to carry out activities under article 36H or article 39G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I.2001/544).

Regulation 16 amends regulation 21 of the ISA regulations to make provision relating to the transfer of an innovative finance account.

Regulation 17 amends regulation 31 of the ISA regulations to make provision relating to the returns of information to HM Revenue & Customs for an innovative finance account.

Regulations 18 to 21 make minor amendments to S.I.2016/16.

The remaining regulations make further minor and consequential amendments to the ISA regulations.

Tax Information and Impact Notes covering this instrument has been published on the HM Government website at—

<https://www.gov.uk/government/publications/income-tax-innovative-finance-individual-savings-account-and-peer-to-peer-loans>.

<https://www.gov.uk/government/publications/individual-savings-accounts-increasing-flexibility-for-savers/individual-savings-accounts-increasing-flexibility-for-savers>

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