
STATUTORY INSTRUMENTS

2018 No. 143

CORPORATION TAX

INCOME TAX

The Taxation of Securitisation Companies
(Amendment) Regulations 2018

| | | |
|---|---------|---------------------------|
| <i>Made</i> | - - - - | <i>6th February 2018</i> |
| <i>Laid before the House of Commons</i> | - - - - | <i>7th February 2018</i> |
| <i>Coming into force</i> | - - | <i>28th February 2018</i> |

The Treasury, in exercise of the powers conferred by sections 624 and 625(3) of the Corporation Tax Act 2010(1), make the following Regulations:

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Taxation of Securitisation Companies (Amendment) Regulations 2018 and come into force on 28th February 2018.

(2) Subject to paragraph (3), these Regulations have effect for periods of account beginning on or after 1st January 2018 which are current on the date these Regulations are made and subsequent periods.

(3) In respect of a company to which the Taxation of Securitisation Companies Regulations 2006(2) applies on the date these Regulations come into force, regulations 3(2)(b) and (3) and 6 (amending the meaning of financial asset) do not apply in relation to a capital market arrangement (within the meaning referred to in those Regulations) in existence on the date these Regulations are made.

Amendment of the Taxation of Securitisation Companies Regulations 2006

2. The Taxation of Securitisation Companies Regulations 2006 are amended as follows.

Amendments to regulation 2 (interpretation)

3.—(1) Amend regulation 2 as follows.

(1) 2010 c. 4; section 625(3) was amended by section 65(5) of the Finance Act 2016 (c. 24).
(2) S.I. 2006/3296, amended by S.I. 2007/3339, 2007/3401 and 2017/1227.

- (2) In paragraph (1)—
 - (a) after the definition of “commercial paper funded company” insert—

““CTA 2010” means the Corporation Tax Act 2010;”,
 - (b) for the definition of “financial asset” substitute—

““financial asset” has the meaning given by regulation 9A;”,
 - (c) omit the definition of “ICTA”, and
 - (d) in the definition of “specified regulation” for “and 16 to 20” substitute “, 14A (removal of withholding obligation), 16 to 20 and 22”.
- (3) Omit paragraph (2).

Amendment to regulation 3 (scope)

- 4. In regulation 3 (scope of these Regulations)—
 - (a) in paragraph (1), for “Corporation Tax” substitute “Taxes”, and
 - (b) in paragraph (2)—
 - (i) in sub-paragraph (d), after “14” insert “and 14A”, and
 - (ii) in sub-paragraph (e), for “21” substitute “23”.

Amendment of regulation 8 (meaning of “warehouse company”)

5. In regulation 8 (meaning of “warehouse company”), in paragraph (1)(a) for “transferring them” substitute “transferring all or substantially all of them directly or indirectly”.

Insertion of new regulation 9A (meaning of “financial asset”)

- 6. After regulation 9 insert—

“Meaning of “financial asset”

9A.—(1) In these Regulations, “financial asset” has the meaning it has for the purposes of generally accepted accounting practice, which is to be treated as—

- (a) including derivative contracts, whether otherwise constituting an asset or liability (other than such contracts excluded by subparagraph (b)(i)), but
 - (b) excluding—
 - (i) derivative contracts where the underlying subject matter is or includes shares (other than shares in a securitisation company which is party to the capital market arrangement) or land,
 - (ii) loan relationships which have embedded derivatives where the underlying subject matter of the embedded derivative is or includes shares or land except where paragraph (2) applies, and
 - (iii) shares (other than shares in a securitisation company which is party to the capital market arrangement).
- (2) This paragraph applies where—
- (a) a company takes reasonable care to ensure that loan relationships which have embedded derivatives where the underlying subject matter of the embedded derivative is or includes shares or land are not included as part of the security for a capital market arrangement,

- (b) such loan relationships are inadvertently included as part of the security for a capital market arrangement, and
 - (c) the return, or potential return, in relation to the shares or land comprised in the underlying subject matter of the embedded derivative is small in value or insignificant in comparison with the return in relation to the loan relationship as a whole.
- (3) For the purposes of this regulation—
- (a) whether an asset acquired, held or managed by a company is a financial asset, and whether the return or potential return in relation to the underlying subject matter of an embedded derivative is of small value or insignificant, is to be determined at the time that asset is first acquired, held or managed by that company;
 - (b) “underlying subject matter” has the meaning given by section 583 of CTA 2009⁽³⁾;
 - (c) a loan relationship has an embedded derivative where the relationship contains rights and liabilities which would, were they entered into separately from the relationship, constitute a derivative contract; and
 - (d) whether an embedded derivative would be an option, future or contract for difference for the purposes of section 583 of CTA 2009 is to be determined having regard to what the character of the embedded derivative would be, if it were a separate contract.”

Amendment to heading

7. In the heading immediately before regulation 14, for “CORPORATION TAX” substitute “TAXES”.

Insertion of new regulation 14A (removal of withholding obligation)

8. After regulation 14 insert—

“Removal of withholding obligation

14A. The duty to deduct a sum representing income tax under section 901 of ITA 2007⁽⁴⁾ does not apply to payments made by or on behalf of a securitisation company.”

Insertion of new regulation 23 (recovery of unpaid corporation tax)

9. At the end⁽⁵⁾ insert—

“**23.** Sections 710 and 713 of CTA 2010 (recovery of unpaid corporation tax) do not apply to a securitisation company where the securitisation company is a person who is linked to X or Y within sections 710(2) or 713(2) respectively.”

Updating references to statutory provisions

10.—(1) In regulation 15, for paragraph (2)⁽⁶⁾ substitute—

“(2) In section 10(1) (end of accounting period), after paragraph (j) insert—

(3) 2009 c. 4.

(4) 2007 c. 3.

(5) A new regulation 22 was inserted by S.I. 2017/1227.

(6) In consequence of the amendment to regulation 15(1) in the table in regulation 10(4), paragraph (2) of regulation 15 is a modification of CTA 2009.

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

(2) Omit regulation 18(2).

(3) For regulations 19 and 20 substitute—

“19.—(1) Sections 374, 375, 377 and 379 in Part 5 of CTA 2009 (connected parties relationships: late interest)(7) do not apply if the person standing in the position of a creditor as respects a loan relationship within those sections is a securitisation company.

(2) Chapter 4 of Part 5 of CTA 2009 (continuity of treatment on transfers within groups or on reorganisations) does not apply if “the transferee” or “the transferor” within the Chapter is a securitisation company.

(3) Sections 406 to 412 in Part 5 of CTA 2009 (deeply discounted securities: connected companies and close companies) do not apply if the person standing in the position of a creditor as respects a security within those sections is a securitisation company.

(4) Section 625 of CTA 2009 (group member replacing another as party to derivative contract) does not apply if the “transferee company” or “transferor company” in subsection (1)(b) of that section is a securitisation company.”

(4) In respect of those regulations listed in column 1 of the table, for the provision appearing in column 2 of that table substitute the provision appearing in column 3 of that table.

| <i>Regulation</i> | <i>Existing provision</i> | <i>Substituted provision</i> |
|---|--|---|
| Regulation 2(1), the definition of “insurance special purpose vehicle”(8) | “section 431(2) of ICTA” | “section 139(1) of the Finance Act 2012(9)” |
| Regulation 2(3) | “Section 839 of ICTA (connected persons)” | “Sections 1122 and 1123 of CTA 2010 (“connected persons”) and (“connected persons: supplementary”)” |
| Regulation 5(2)(10) | “section 84(2)(a) of the Finance Act 2005” | “section 623 of CTA 2010 (meaning of “securitisation company”)” |
| Regulation 5(3) | “section 84(2)(a)(ii) of that Act” | “section 623(4) of CTA 2010” |
| Regulation 5(4) | “section 84(2)(a)(iii) of that Act” | “section 623(5) of CTA 2010” |
| Regulation 5(5) | “section 84(2)(a)(i) of that Act” | “section 623(3) of CTA 2010” |

(7) Relevant amendments have been made to Part 5 by section 25 of the Finance Act 2015 (c. 11) (loan relationships: repeal of certain provisions relating to late interest etc) under which sections 374, 377, 407 and 408 are repealed and sections 372 and 406 are amended to the extent provided by section 25(6) and (7) and subject to section 25(8).

(8) Inserted by S.I. 2007/3401.

(9) 2012 c. 14.

(10) Amended by S.I. 2007/3401.

| <i>Regulation</i> | <i>Existing provision</i> | <i>Substituted provision</i> |
|--|---|---|
| Regulation 11(8), in the definition of “appropriate exchange rate” | “has the meaning given in section 92D(2)(b) of the Finance Act 1993” | “means the rate provided by section 11(2) of CTA 2010 (sterling equivalents: basic rule)” |
| Regulation 11(8), in the definition of “functional currency” | “section 92E(3) of the Finance Act 1993” | “section 17(4) of CTA 2010” |
| Regulation 12(4), in the definition of “tax advantage”(11) | “section 840ZA of ICTA” | “section 1139 of CTA 2010 (tax advantage)” |
| Regulation 14(3) | “paragraph 12A of Schedule 9 to the Finance Act 1996” | “sections 344 to 346 of CTA 2009(12)” |
| Regulation 14(3) | “paragraph 30A of Schedule 26 to the Finance Act 2002” | “sections 630 to 632 of CTA 2009(13)” |
| Regulation 15(1) | “ICTA” | “CTA 2009” |
| Regulation 16 | “Paragraphs (b) to (f) in section 209(2) (meaning of distribution) of ICTA” | “Paragraphs B to F in section 1000(1) of CTA 2010 (meaning of “distribution”)” |
| Regulation 17 | “Chapter 4 of Part 10 (group relief) of ICTA” | “Part 5 (group relief) of CTA 2010” |

6th February 2018

David Rutley
Mark Spencer
Two of the Lords Commissioners of Her Majesty’s Treasury

(11) Amended by [S.I. 2007/3339](#).

(12) Sections 345 and 346 were amended respectively by paragraphs 606 and 607 of Schedule 1 to CTA 2010 and by section 28(1) and (2) of the Finance Act 2014 (c. 26).

(13) Sections 631 and 632 were amended respectively by paragraphs 640 and 641 of Schedule 1 to CTA 2010 and by section 28(1) and (3) of the Finance Act 2014.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Taxation of Securitisation Companies Regulations 2006.

Regulation 1 provides for citation, commencement and effect. The Regulations have effect for periods of account beginning on or after 1st January which are current on the date the Regulations are made and subsequent periods. Authority for this retrospective effect is provided by section 625(3) of the Corporation Tax Act 2010. The amendment to the definition of “financial asset” does not apply in relation to a capital market arrangement (within the meaning referred to in the Regulations) in existence on the date these Regulations are made.

Regulation 3 amends definitions in regulation 2.

Regulation 4 makes consequential amendments to regulation 3.

Regulation 5 amends regulation 8 to amend the definition of warehouse company.

Regulation 6 inserts a new definition of financial asset.

Regulation 7 makes a consequential amendment to a heading.

Regulation 8 inserts a new provision to remove the withholding obligation under section 901 of the Income Tax Act 2007.

Regulation 9 inserts a new provision to disapply sections 710 and 713 of Corporation Tax Act 2010 (recovery of unpaid corporation tax) in relation to a securitisation company

Regulation 10 updates statutory references.

A Tax Information and Impact Note covering this instrument was published on 4 December 2017 alongside the consultation draft of the Taxation of Securitisation Companies (Amendment) Regulations 2018 and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.