

2022 No. 286

BANK LEVY

CORPORATION TAX

The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022

<i>Made</i>	- - - -	<i>14th March 2022</i>
<i>Laid before the House of Commons</i>		<i>15th March 2022</i>
<i>Coming into force</i>	- -	<i>5th April 2022</i>

The Treasury, in exercise of the powers conferred by section 133N(1) and (3A) of the Corporation Tax Act 2009(a), section 269BE(1)(a), (b) and (d), (1B) and (1C) of the Corporation Tax Act 2010(b) and paragraph 81(1)(a), (b) and (d), (1B) and (2)(c) of Schedule 19 to the Finance Act 2011(c), make the following Regulations:

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022.

(2) These Regulations come into force on 5th April 2022 and apply as follows.

(3) Subject to paragraph (4), the amendments made by Part 2 of these Regulations apply from 1 January 2022.

(4) The amendments made by regulation 4 apply from the commencement date.

(5) Subject to paragraphs (6), (7) and (8), the amendments made by Part 3 of these Regulations apply in relation to any accounting period(d) beginning on or after 1 January 2022.

(6) For the purposes of paragraph (5), if an accounting period begins before and ends on or after 1 January 2022 (“the January straddling period”)—

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- (a) 2009 c. 4. Section 133N was inserted by section 18(1) of the Finance (No. 2) Act 2015 (c. 33). Section 133N(3A) was inserted by section 134(1) of the Finance Act 2021 (c. 26).
- (b) 2010 c. 4. Section 269BE was inserted by paragraph 1 of Schedule 2(1) to the Finance Act 2015 (c. 11) and was amended by section 134(4) of the Finance Act 2021. Sections 269BE(1A) to (1D) were inserted by section 134(4) of the Finance Act 2021.
- (c) 2011 c. 11. Paragraph 81 was amended by S.I. 2013/636, paragraph 12 of Schedule 26 to the Finance Act 2014 (c. 26), paragraph 34 of Schedule 9(2) to the Finance Act 2018 (c. 3) and section 134(7) of the Finance Act 2021.
- (d) Accounting period is defined in section 1119 of the Corporation Tax Act 2010.

- (a) so much of that accounting period as falls before 1 January 2022 and so much of it as falls on or after that date are treated as separate accounting periods, and
- (b) where it is necessary to apportion amounts for the January straddling period to the different parts of that period, that apportionment is to be made—
 - (i) on a time basis according to the respective lengths of the periods, or
 - (ii) if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

(7) The amendments made by regulation 9 apply in relation to any accounting period beginning on or after the commencement date.

(8) For the purposes of paragraph (7), if an accounting period begins before and ends on or after the commencement date (“the straddling period”)—

- (a) so much of that accounting period as falls before the commencement date and so much of it as falls on or after that date are treated as separate accounting periods, and
- (b) where it is necessary to apportion amounts for the straddling period to the different parts of that period, that apportionment is to be made—
 - (i) on a time basis according to the respective lengths of the periods, or
 - (ii) if that method produces a result that is unjust or unreasonable, on a just and reasonable basis.

(9) Subject to paragraph (10), the amendments made by Part 4 of these Regulations apply in relation to any chargeable period^(a) ending on or after 1 January 2022.

(10) The amendments made by regulation 17 apply in relation to any chargeable period ending on or after the commencement date.

(11) For the purposes of this regulation, “commencement date” means 5 April 2022.

PART 2

Amendment to the Corporation Tax Act 2009

2. Chapter 9 of Part 3 of the Corporation Tax Act 2009 (trade profits: other specific trades)^(b) is amended as follows.

3.—(1) Section 133F (meaning of “excluded company” for purposes of section 133E) is amended as follows.

(2) In subsection (2A)(c), after “being” insert—

“—

- (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.”.

(3) In subsection (4)—

(a) before paragraph (a), insert—

“(za) in relation to a time on or after 1 January 2022, a commodity and emission allowance dealer;”;

(b) in paragraph (a), after “1 January 2014” insert “but before 1 January 2022”.

(4) In subsection (7)—

^(a) Chargeable period is defined in paragraphs 4 and 5 of Schedule 19 to the Finance Act 2011.

^(b) Sections 133F, 133G and 133H were inserted by section 18(1) of the Finance (No. 2) Act 2015. Sections 133F(2A) and (2B) were inserted by section 56(2) of the Finance Act 2016 (c. 24). Section 133F(7) was amended by sections 56(3) and (4) of the Finance Act 2016.

- (a) in the definition of “730k firm”—
 - (i) in paragraph (a), after “1 January 2014” insert “but before 1 January 2022”;
 - (ii) in paragraph (b), for “that date” substitute “1 January 2014”;
- (b) in the definition of “full scope investment firm”—
 - (i) in paragraph (a), after “1 January 2014” insert “but before 1 January 2022”;
 - (ii) in paragraph (b), for “that date” substitute “1 January 2014”;
- (c) at the appropriate places insert—
 - ““commodity and emission allowance dealer” has the meaning given by the FCA Handbook at the time in question;”;
 - ““FCA investment firm” has the meaning given by section 143A of FISMA 2000;”.

4. In section 133G (meaning of “relevant regulated activity” for purposes of sections 133E and 133F), in subsection (1), after paragraph (d) insert—

“(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);”.

5.—(1) Section 133H (meaning of “investment bank” for purposes of section 133E) is amended as follows.

(2) After subsection (1) insert—

“(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
- (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.

(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”.

(3) In subsection (2), in the words before paragraph (a), after “1 January 2014” insert “but before 1 January 2022”.

(4) In subsection (6), after “subsection”, insert “(1A)(a)”.

(5) In subsection (7), at the appropriate place, insert—

““FCA investment firm” has the meaning given by section 143A of FISMA 2000;”.

PART 3

Amendment to the Corporation Tax Act 2010

6. Part 7A of the Corporation Tax Act 2010 (banking companies)(a) is amended as follows.

7.—(1) Section 269B (meaning of “banking company”) is amended as follows.

(2) In subsection (6A), for paragraph (a) substitute—

(a) Sections 269B, 269BA, 269BB, 269BC and s269BE were inserted by paragraph 1 of Schedule 2(1) to the Finance Act 2015. Section 269B(5) was substituted by section 20(10)(a) of the Finance (No. 2) Act 2015. Section 269B(6A) was inserted by section 20(10)(b) of the Finance (No. 2) Act 2015. Section 269BA was inserted by paragraph 1 of Schedule 2(1) to the Finance Act 2015. Section 269BA(1)(f) was amended by section 20(11) of the Finance (No. 2) Act 2015. Sections 269BA(1A) and (1B) were inserted by section 56(8) of the Finance Act 2016. Section 269BC(8) was amended by section 20(12)(a) of the Finance Act (No. 2) 2015. Section 269BC(9) was amended by section 20(12)(b) of the Finance (No. 2) Act 2015. Sections 269BE(1A) to 269(1D) were added by section 134(4)(b) of the Finance Act 2021.

“(a) it is an FCA investment firm that meets the conditions in subsection (6B), or”.

(3) After subsection (6A) insert—

“(6B) 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.

(6C) In subsection (6B)—

“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.

(6D) In determining, for the purposes of subsection (6B), 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.”.

8.—(1) Section 269BA (excluded entities) is amended as follows.

(2) In subsection (1)—

- (a) omit paragraph (f);

(b) before paragraph (g) insert—

“(fa) a commodity and emission allowance dealer;”.

(3) In subsection (1A)(c), for “both an IFPRU 730k firm and a full scope IFPRU investment firm” substitute “an FCA investment firm that meets the conditions in section 269B(6B)”.

9. Section 269BB (relevant regulated activities), after paragraph (d) insert—

“(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 FCA Handbook);”.

10.—(1) Section 269BC (banking companies: supplementary definitions) is amended as follows.

(2) After subsection (4), insert—

“(4A) “FCA investment firm” has the meaning given by section 143A of FISMA 2000.”.

(3) In subsection (7), for “PRA Handbook” substitute “PRA Rulebook”.

(4) In subsection (8) omit—

““exempt IFPRU commodities firm”;

“full scope IFPRU investment firm”;

“IFPRU 730k firm”;”.

(5) After subsection (8) insert—

“(8A) The following terms have the meaning given by the FCA Handbook -

“commodity and emission allowance dealer”;

“dealing on own account”;

“financial instrument”;

“initial capital”;

“investment firm”;

“market value”;

“permanent minimum capital requirement”.”.

(6) In subsection (10), for “an IFPRU 730k firm and a full scope IFPRU investment firm” substitute “an FCA investment firm that meets the conditions in section 269B(6B)”.

(7) In subsection (11)—

(a) for “subsection (7)” substitute “this Chapter”;

(b) in the definition of “the PRA Handbook”, for “Handbook”, in each place, substitute “Rulebook”.

11. In section 269BE (powers to amend), in each of subsections (1)(b) and (2), for “PRA Handbook” substitute “PRA Rulebook”.

PART 4

Amendment to Schedule 19 to the Finance Act 2011

12. Schedule 19 to the Finance Act 2011 (the bank levy) is amended as follows.

13. In paragraph 12 (definition of “banking group”)(a), in sub-paragraph (8)—

(a) in paragraph (a)(iv), for “an IFPRU 730k firm and a full scope IFPRU investment firm” substitute “an FCA investment firm that meets the conditions in paragraph 70(1B)”;

(a) Paragraph 12 was amended by paragraph 23 of Schedule 9(2) to the Finance Act 2018 and section 20 of the Finance (No. 2) Act 2015.

- (b) in paragraph (b)(iv), for “an IFPRU 730k firm and a full scope IFPRU investment firm substitute “an FCA investment firm that meets the conditions in paragraph 70(1B)”.

14. In paragraph 30 (exclusion of “tier one capital equity and liabilities”)(a), in sub-paragraph (3)(c), for “PRA Handbook” substitute “the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook had effect from time to time)”.

15.—(1) Paragraph 70 (definitions)(b) is amended as follows.

(2) In sub-paragraph (1)—

- (a) at the appropriate place insert—

““FCA investment firm” has the meaning given by section 143A of FISMA 2000;”
;

- (b) for the definition of “investment bank” substitute—

““investment bank” has the meaning given by sub-paragraph (1A);”;

- (c) in the definition of “the PRA Handbook”, for “Handbook”, in each place, substitute “Rulebook”.

(3) After sub-paragraph (1) insert—

“(1A) In this Schedule, “investment bank” means an entity which—

- (a) is an FCA investment firm that meets the conditions in sub-paragraph (1B), or
- (b) 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 sub-paragraph 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 sub-paragraph (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 monies 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

(a) Paragraph 30 was amended by paragraph 9(2) of Schedule 26 to the Finance Act 2014 and paragraph 9 of Schedule 9(1) to the Finance Act 2018.

(b) Paragraph 70 was amended by S.I. 2016/874, SI 2013/636, paragraphs 14(2) to 14(8) of Schedule 9(1) to the Finance Act 2018, paragraph 30 of Schedule 9(2) to the Finance Act 2018 and section 20(3) of the Finance (No. 2) Act 2015.

- (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 (including in the course of operating an organised trading facility) 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.

(1D) In determining, for the purposes of sub-paragraph (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.”.

(4) In sub-paragraph (2), for “Handbook” substitute “Rulebook”.

(5) In sub-paragraph (2A), for the list of terms substitute—

- ““commodity and emission allowance dealer”;
- “dealing on own account”;
- “financial instrument”;
- “initial capital”;
- “investment firm”;
- “market value”;
- “permanent minimum capital requirement”.”.

(6) In sub-paragraph (3), for “an IFPRU 730k firm and a full scope IFPRU investment firm” substitute “an FCA investment firm that meets the conditions in sub-paragraph (1B)”.

16.—(1) In paragraph 73 (meaning of “excluded entity”)(a) is amended as follows.

(2) In sub-paragraph (1)—

- (a) omit paragraph (f);
- (b) before paragraph (g) insert—

“(fa)a commodity and emission allowance dealer,”.

(3) In sub-paragraph (1A)(c), for “both an IFPRU 730k firm and a full scope IFPRU investment firm” substitute “an FCA investment firm that meets the conditions in paragraph 70(1B)”.

17. In paragraph 79 (meaning of “relevant regulated activity”), after paragraph (d) insert—

(a) Paragraph 73(1) was amended by section 20(5) of the Finance (No. 2) Act 2015, paragraph 173 of Schedule 4(2) to the Co-operative and Community Benefit Societies Act 2014 (c. 14) and section 56(11) of the Finance Act 2016. Paragraph 73(1A) was inserted by section 56(12) of the Finance Act 2016. Paragraph 73(2) was amended by paragraph 246 of Schedule 16(3) to the Finance Act 2012 (c. 14). Paragraph 73(3) was amended by paragraph 33 of Schedule 9(2) to the Finance Act 2018.

“(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 FCA Handbook);”.

18. In paragraph 81 (powers to amend)(a), in sub-paragraph (1)(b), for “Handbook” substitute “Rulebook”.

*Rebecca Harris
Michael Tomlinson*

14th March 2022

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend various provisions in primary legislation to take into account the new regulatory framework for banking companies.

Certain provisions of the tax code provide for specific rules for banking companies: sections 133A to 133N of the Corporation Tax Act 2009 (“CTA 2009”) (c. 4) provides for a restriction on deductions for compensation payments, Part 7A of the Corporation Tax Act 2010 (“CTA 2010”) (c. 4) provides for a restriction on the use of losses and a corporation tax surcharge on banks, and Schedule 19 to the Finance Act 2011 (“FA 2011”) (c. 11) provides for a levy on the equity and liabilities of banks. These rules defined a banking company and banking group using definitions from the “Prudential Sourcebook for Investment Firms” within the Financial Conduct Authority Handbook (the IFPRU regulatory regime). This was replaced by the Investment Firms Prudential Regime (‘IFPR’) from 1 January 2022. Accordingly, these regulations amend the banking tax rules legislation to define a banking company and banking group by reference to the new regime.

The amendments made to the restriction on deductions for compensation payments apply from 1 January 2022. The amendments made to the restriction on the use of losses and the corporation tax surcharge on banks apply in relation to any accounting period beginning on or after 1 January 2022. Where accounting periods straddle 1 January 2022, the period before 1 January 2022 is treated as a separate accounting period to the period from 1 January 2022 to the end of the accounting period. Apportionments to these separate periods are to be made on a time basis or, if that method produces a result that is unjust or unreasonable, a just and reasonable basis. The amendments made to the bank levy apply in relation to any chargeable period ending on or after 1 January 2022. Authority for the retrospection is provided by section 133N(3A) of CTA 2009, section 269BE(1C) of CTA 2010 and paragraph 81(2)(c) of Schedule 19 to FA 2011.

There is an exception to the above. The changes being made in respect of a company’s operations of an organised trading facility are to apply in the same way as the provisions of the previous paragraph except that the words “1 January 2022” should be replaced with 5 April 2022.

A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

(a) Paragraph 81 was amended by S.I. 2013/636, paragraph 12 of Schedule 26 to the Finance Act 2014, paragraph 34 of Schedule 9(2) to the Finance Act 2018 and section 134(7) of the Finance Act 2021.

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