

EXPLANATORY MEMORANDUM TO

THE TAXATION OF BANKS (AMENDMENTS TO THE CORPORATION TAX ACT 2009, CORPORATION TAX ACT 2010 AND FINANCE ACT 2011) REGULATIONS 2022

2022 No. 286

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.
- 1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This statutory instrument amends the definitions within the banking tax legislation to reflect changes made by the Financial Conduct Authority (FCA) following the introduction of their new Investment Firm Prudential Regime (IFPR).
- 2.2 These bank tax rules contain definitions that rely on the FCA Handbook for the previous regulatory regime, which was replaced by the IFPR with effect from 1 January 2022.
- 2.3 In addition to this, the list of regulated activities is being updated to include operating an organised trading facility. This is an activity that has become regulated since the introduction of the most recent banking tax rules, so the opportunity is being taken to add this to the list of regulated activities.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 Several of the provisions of this statutory instrument have retrospective effect from 1 January 2022. The authority to make provisions with retrospective effect are contained in section 133N(3A) of the Corporation Tax Act 2009, section 269BE(1C) of the Corporation Tax Act 2010 and paragraph 81(2)(c) of Schedule 19 to the Finance Act 2011.
- 3.2 Most of the amendments made by the regulations have effect from 1 January 2022, which is when the IFPR commenced, and will ensure businesses continue to be taxed as they were previously. The amendments relating to the activity of operating an organised trading facility may bring new entities within the scope of the banking tax rules and will have effect prospectively, from 21 days after the day on which this instrument is laid.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 John Glen, Economic Secretary to the Treasury, has made the following statement regarding Human Rights:

“In my view the provisions of The Taxation of Banks (Amendments to the Corporation Tax Act 2009, Corporation Tax Act 2010 and Finance Act 2011) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 From 1 January 2022, the FCA has implemented a new regulatory regime for investment firms, the IFPR, through the Investment Firms Prudential Regime Instrument 2021 (FCA 2021/38) and Investment Firms Prudential Regime (Consequential Amendments to Other Prudential Sourcebooks) Instrument 2021 (FCA 2021/39).
- 6.2 This instrument is made using the powers contained within paragraph 81 of Schedule 19 to the Finance Act 2011, section 133N of the Corporation Tax Act 2009, and section 269BE of the Corporation Tax Act 2010.

7. Policy background

What is being done and why?

- 7.1 The banking tax rules include the Bank Levy, the Code of Practice on Taxation for Banks, restrictions on relief for compensation payments by banks, the bank loss relief restriction and the Corporation Tax surcharge on banking companies, all of which apply to banks, as defined in their respective legislation.
- 7.2 The banking tax rules are contained in different locations within the Taxes Acts, with each set of rules having definitions of entities that are banks for their purposes. These definitions are drawn from terms used in regulatory definitions. For the purposes of the banking tax rules, banks can be either deposit takers or investment banks.
- 7.3 Deposit takers have regulatory permission from the Prudential Regulatory Authority (PRA) to accept deposits.
- 7.4 Whilst investment banks are generally regulated by the FCA, the largest investment banks are designated to be regulated by the PRA. Such PRA-designated investment banks are within the banking tax rules. Other investment firms are regulated by the FCA and the largest of these are within the banking tax rules.
- 7.5 There is no direct method to define an investment bank, so the banking tax rules take definitions from the FCA Handbook. The relevant terms in the FCA Handbook were previously in the Prudential sourcebook for Investment Firms (IFPRU).
- 7.6 The banking tax rules are intended to include the larger and more complex investment firms within their definition of an investment bank. Therefore, to be within scope of the banking tax rules a firm had to be both an ‘IFPRU 730k firm’, which refers to the highest capital requirements the FCA imposed on an investment firm, and an ‘IFPRU full scope investment firm’, which relates to the activities the FCA allowed the firm to undertake.
- 7.7 The FCA introduced a new prudential regime for investment firms, IFPR, from 1 January 2022. The FCA consulted on the new regime throughout 2021, with final rules published in October 2021. The terms ‘IFPRU 730k firm’ and ‘IFPRU full scope

investment firm’, among others, have ceased to be defined in the FCA Handbook, and as such, the banking tax rules need to be updated to ensure that the rules continue to include firms in these categories.

- 7.8 Those firms regulated by the PRA, both deposit-takers and designated investment firms, will continue to be regulated by the PRA and no substantial changes will be made to the banking tax rules concerning these firms.
- 7.9 This instrument updates the definitions so that the population of FCA-regulated investment firms currently subject to the banking tax rules continues to be subject to these rules.
- 7.10 The IFPRU sourcebook in the FCA Handbook has been replaced. Therefore, this instrument replaces the parts of the definitions that use terms from the IFPRU sourcebook, such as ‘an IFPRU 730k firm’ and ‘a full scope IFPRU investment firm’ with new definitions based on an FCA investment firm and on terms used in the updated FCA Handbook.
- 7.11 The updated rules will refer to an FCA investment firm that meets certain conditions. ‘FCA investment firm’ is defined in section 143A of the Financial Services and Markets Act 2000.
- 7.12 The first condition is that the FCA investment firm must have a permanent minimum capital requirement of £750,000. This will exclude investment firms with lower capital requirements.
- 7.13 Certain firms that meet this first condition will not be undertaking the level of activities that would have required them to be regulated as full scope IFPRU investment firms under the previous rules, or they would not have been required to be regulated as IFPRU 730k firms. Therefore, a second condition is included in the legislation to specifically exclude these firms.
- 7.14 The second condition excludes ‘limited activity firms’, ‘limited licence firms’, ‘local firms’, and ‘matched principal trading firms’. These are defined in the new legislation, and the wording for these definitions is taken from either the revoked IFPRU section of the FCA Handbook or definitions elsewhere that were referred to by the FCA Handbook.
- 7.15 In addition to being regulated as described above, a firm needs to be carrying on certain regulated activities, such as, but not limited to, accepting deposits or dealing in investments as principal, to be within scope of the banking tax rules. These activities are contained in a list of ‘relevant regulated activities’ in each of the banking tax definitions and defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544). This order was amended in 2017 to add the regulated activity of ‘operating an organised trading facility’. This activity has not subsequently been added to the lists of relevant regulated activities in the banking tax rules.
- 7.16 These lists of relevant regulated activities in the banking tax rules will therefore be updated to include the activity of operating an organised trading facility, restoring alignment of the banking tax rules with the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate this instrument.

10. Consultation outcome

10.1 The draft regulations were published for a six-week consultation beginning 30 November 2021. Meetings were held and responses received from a small number of accountancy firms, law firms, and investment firms affected by the rules. The instrument has been updated to reflect technical comments received.

11. Guidance

11.1 HMRC's [Bank Levy Manual](#) and [Banking Manual](#) contain pages explaining these definitions.

11.2 They will be updated when the instrument comes into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

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

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through normal compliance activity and regular communication with affected taxpayer groups.

14.2 In accordance with section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015, this instrument does not include a statutory review clause because it is made in relation to the imposition of a tax, duty, levy or other charge.

15. Contact

15.1 Robby Wells and Andrew Martel at HMRC, email: financialservicesbai@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Richard Thomas, Deputy Director for the Financial Products and Services Team in Business, Assets and International, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.