STATUTORY INSTRUMENTS

2018 No. 143

CORPORATION TAX
INCOME TAX

The Taxation of Securitisation Companies (Amendment) Regulations 2018

Made - - - -	*6th February 2018*
Laid before the House of Commons - - - -	*7th February 2018*
Coming into force - -	*28th February 2018*

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.