STATUTORY INSTRUMENTS

2016 No. 364

INCOME TAX
CAPITAL GAINS TAX

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

Made - - - -	*14th March 2016*
Laid before the House of Commons - - - -	*15th March 2016*
Coming into force - -	*6th April 2016*

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(**1**) and section 151 of the Taxation of Chargeable Gains Act 1992(**2**).

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(**3**) 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—

(**1**) 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).

(**2**) 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.

(**3**) 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.

""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;";

""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(**4**);";

""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(**5**);".

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—

(**4**) 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.

(**5**) 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.

"(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)—

(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)"; and

(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)"; and

(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.".