Draft Regulations laid before the House of Commons under section 221 of the Finance Act 2012, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2013 No.

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX
STAMP DUTY
STAMP DUTY RESERVE TAX

The Taxation of Regulatory Capital Securities Regulations 2013

Made - - - -	***
Coming into force - -	*1st January 2014*

The Treasury make the following Regulations in exercise of the powers conferred by section 221 of the Finance Act 2012(**1**).

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with section 221(6) of the Finance Act 2012.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Taxation of Regulatory Capital Securities Regulations 2013 and shall come into force on 1st January 2014.

(2) These Regulations have effect—

(a) for the purposes of income tax, for payments made on or after 1st January 2014;

(b) for the purposes of corporation tax, for accounting periods beginning on or after that date (this is subject to paragraph (3) and regulation 11);

(c) for the purposes of capital gains tax, in relation to disposals made on or after that date;

(d) for the purposes of stamp duty, in relation to instruments executed on or after that date;

(e) for the purposes of stamp duty reserve tax—

(**1**) 2012 c. 14.

(i) in the case of agreements to transfer securities which are not conditional, in relation to agreements made on or after that date, and

(ii) in the case of agreements to transfer securities which are conditional, in relation to agreements where the condition is satisfied on or after that date.

(3) For the purposes of paragraph (2)(b), an accounting period beginning before and ending on or after 1 January 2014 is to be treated for the purposes of these Regulations as if so much of the period as falls before that date, and so much of the period as falls on or after that date, were separate accounting periods.

Regulatory capital securities

2.—(1) For the purposes of these Regulations, "regulatory capital security" means a security which qualifies, or has qualified, as—

(a) an Additional Tier 1 instrument and forms, or formed, a component of Additional Tier 1 capital for the purposes of CRR, or

(b) a Tier 2 instrument and forms, or formed, a component of Tier 2 capital for the purposes of CRR.

(2) In paragraph (1), "security" does not include shares other than deferred shares issued by a building society within paragraph (1)(a).

(3) For the purposes of this regulation—

"Additional Tier 1 instrument" means a security which qualifies as an Additional Tier 1 instrument under Article 52 of CRR,

"building society" and "deferred shares" have the same meanings as in the Building Societies Act 1986(**2**),

"Tier 2 instrument" means a security which qualifies as a Tier 2 instrument under Article 63 of CRR.

(4) In these Regulations, "CRR" means the Commission Regulation (EU) No 575/2013(**3**) (as amended from time to time).

Regulatory capital securities treated as loan relationships

3.—(1) For the purposes of the Corporation Tax Acts, a regulatory capital security represents a loan relationship.

(2) But in relation to the issuer of a regulatory capital security and any connected creditor—

(a) sections 415, 416 and 585 of CTA 2009 (loan relationships with embedded derivatives) do not apply in relation to the security,

(b) the credits and debits to be brought into account in respect of the security are determined as if fair value accounting were not generally accepted accounting practice in relation to the security or part of the security (including a hedged component), and

(c) no credit or debit is to be brought into account under Part 5 of CTA 2009—

(i) in respect of the principal amount of the security being written down on a permanent or temporary basis or the security being converted to a Common Equity Tier 1 instrument in accordance with any regulatory requirements or the provisions governing the security, or

(**2**) 1986 c. 53; section 109 was amended by paragraph 8 of Schedule 12 to the Finance Act 1988 (c. 39); see also section 119 for the definitions of "building society" and "deferred shares".
(**3**) OJ L 176/1, 27.6.13.

(ii) in respect of the principal amount of the security being written up, following a write down of the principal amount on a temporary basis, in accordance with any regulatory requirements or the provisions governing the security.

(3) Paragraph (2) applies for the purposes of determining the profits and losses to be recognised in determining the carrying value of a regulatory capital security for the purposes of section 317 of CTA 2009 as it applies for the purposes of determining the credits and debits to be brought into account under Part 5 of CTA 2009.

(4) In this regulation—

"Common Equity Tier 1 instrument" means a capital instrument which qualifies as a Common Equity Tier 1 instrument under Article 28 or 29 of CRR,

"connected creditor" means a company standing in the position of creditor as respects a regulatory capital security where the creditor relationship is a connected companies relationship for the purposes of Part 5 of CTA 2009,

"fair value accounting" have the same meanings as in Part 5 of CTA 2009.

Regulatory capital securities treated as normal commercial loans

4. For the purposes of sections 158(1)(b) and 159(4)(b) of CTA 2010 and section 117(1)(a) of TCGA 1992, a regulatory capital security represents a normal commercial loan.

Treatment of payments

5.—(1) A payment in respect of a regulatory capital security is—

(a) not a distribution for the purposes of the Tax Acts, but

(b) is income chargeable under Chapter 2 of Part 4 of ITTOIA 2005(**4**) (interest) for the purposes of income tax.

(2) In paragraph (1), "payment" does not include a repayment of the principal amount of the security.

Exception from duty to deduct income tax

6. The duty to deduct a sum representing income tax under section 874 (duty to deduct from certain payments of yearly interest) or section 889 (payments in respect of building society securities) of ITA 2007(**5**) does not apply to a payment in respect of a regulatory capital security.

Exemption from stamp duties

7. A transfer of a regulatory capital security is exempt from all stamp duties.

Anti-avoidance

8.—(1) Regulations 3 to 7 do not apply in the case of a regulatory capital security if there are arrangements the main purpose, or one of the main purposes, of which is to obtain a tax advantage for any person as a result of the application of these Regulations in respect of that security.

(2) In paragraph (1), "tax advantage" has the meaning given in section 1139 of CTA 2010.

(**4**) 2005 c. 5.
(**5**) 2007 c. 3; sections 874 and 889 were amended by paragraphs 26 and 27 of Schedule 1 to the Finance Act 2008 (c. 9).