Draft Regulations laid before the House of Common under section 84 of the Finance Act 2005 for approval by resolution of that House

DRAFT STATUTORY INSTRUMENTS

2006 No.

CORPORATION TAX

The Taxation of Securitisation Companies Regulations 2006

Made - - - - **

Coming into force in accordance with regulation 1

The Treasury make the following Regulations in exercise of the powers conferred upon them by section 84 of the Finance Act 2005(**1**).

A draft of this instrument was laid before and approved by a resolution of the House of Commons in accordance with section 84(7) of the Finance Act 2005.

Preliminary

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Taxation of Securitisation Companies Regulations 2006 and shall come into force on the day after the day on which they are made.

(2) These Regulations have effect for periods of account beginning on or after 1st January 2007.

Interpretation

2.—(1) In these Regulations—

"asset-holding company" has the meaning given by regulation 6;

"capital market arrangement" and "capital market investment" have the same meaning as in section 72B(1) of the Insolvency Act 1986(**2**) (see paragraphs 1, 2 and 3 of Schedule 2A to that Act);

"commercial paper funded company" has the meaning given by regulation 9;

(**1**) 2005 c. 7. Section 84 has been amended by section 101(1), (5) and (6) and section 178 of, and Part 3(19) of Schedule 26 to, the Finance Act 2006 (c. 25).

(**2**) 1986 c.45. Section 72B was inserted by section 250(1) of the Enterprise Act 2002 (c. 40) and Schedule 2A was inserted by section 250(2) of, and Schedule 18 to, that Act. Paragraph 1 of Schedule 2A was amended by S.I. 2003/1468 and S.I. 2003/2093.

"financial asset" has the meaning it has for generally accepted accounting practice (subject to paragraph (2)) but—

(a) includes derivative contracts as defined for the purposes of Schedule 26 to the Finance Act 2002 (see paragraph 2 (1) of that Schedule (**3**)) whether otherwise constituting an asset or a liability, and

(b) does not include shares (other than shares in a securitisation company which is party to the capital market arrangement);

"ICTA" means the Income and Corporation Taxes Act 1988(**4**);

"independent persons" means persons who are not connected with a company (and see paragraph (3));

"intermediate borrowing company" has the meaning given by regulation 7;

"note-issuing company" has the meaning given by regulation 5;

"related transaction" is to be construed in accordance with paragraphs (4) and (5);

"retained profit" is to be construed in accordance with regulation 10;

"securitisation company" has the meaning given by regulation 4;

"specified regulations" means regulations 14 (corporation tax charge) and 16 to 20 (application, modification and non-application of provisions of the Corporation Tax Acts);

"warehouse company" has the meaning given by regulation 8.

(2) For the purposes of these Regulations whether an asset acquired, held or managed by a company is a financial asset shall be determined at the time that asset is first acquired, held or managed by that company.

(3) Section 839 of ICTA(**5**) (connected persons) applies for the purposes of the definition of "independent persons", except that in applying the definition of "control" in that section a person is not to be treated as a participator in a company by reason only that he is a loan creditor of the company.

(4) For the purpose of these Regulations one or more transactions are to be regarded as related transactions, in the case of any arrangements, if it would be reasonable to assume, from either or both of—

(a) the likely effect of the transactions, and

(b) the circumstances in which the transactions are entered into or effected,

that none of the transactions would have been entered into or effected independently of the arrangements.

(5) Transactions are not prevented from being related transactions, in the case of any arrangements, just because the transactions—

(a) are not between the same parties, or

(b) are not between the parties to the capital market arrangements.

Scope of these Regulations

3.—(1) These Regulations make provision as to the application of the Corporation Tax Acts in relation to a securitisation company.

(**3**) 2002 c. 23. Paragraph 2(1) was amended by articles 2 and 3 of S.I. 2004/2201.
(**4**) 1988 c. 1.
(**5**) 1988 c. 1. Section 839 was amended by section 74 of, and paragraph 20 of Schedule 17 to, the Finance Act 1995 (c. 4), section 882 of, and paragraph 341 of Schedule 1 to, the Income Tax (Trading and Other Income) Act 2005 (c. 5), and S.I. 1988/745.

(2) The Regulations deal with the following matters—

(a) they define "securitisation company" and related expressions (see regulations 4 to 10);

(b) they specify securitisation companies to which specified regulations do not apply (see regulations 11 to 12);

(c) they specify companies to which these Regulations do not apply (see regulation 13);

(d) they make provision as to profit of a securitisation company to be brought into account for an accounting period for corporation tax purposes (see regulation 14);

(e) they make supplementary provision (see regulations 15 to 21).

Meaning of "securitisation company" and related expressions

Meaning of "securitisation company"

4.—(1) For the purposes of these Regulations a "securitisation company" means a company that meets conditions A and B.

(2) Condition A is that the company is—

(a) a note-issuing company (see regulation 5),

(b) an asset-holding company (see regulation 6),

(c) an intermediate borrowing company (see regulation 7),

(d) a warehouse company (see regulation 8), or

(e) a commercial paper funded company (see regulation 9).

(3) Condition B is that the company has a retained profit (see regulation 10).

Meaning of "note-issuing company"

5.—(1) For the purposes of these Regulations a "note-issuing company" means a company that meets conditions A to D.

(2) Condition A is that the company is within section 84(2)(a) of the Finance Act 2005.

(3) Condition B is that the securities that represent the capital market investment referred to in section 84(2)(a)(ii) of that Act are issued wholly or mainly to independent persons.

(4) Condition C is that the total value of the capital market investments made under the capital market arrangement referred to in section 84(2)(a)(iii) of that Act is at least £10 million.

(5) Condition D is that the company's only business apart from the activity mentioned in section 84(2)(a)(i) of that Act (being party as debtor to a capital market investment), and apart from any incidental activities, consists in one or both of the following activities—

(a) acquiring, holding and managing financial assets forming the whole or part of the security for the capital market arrangement; or

(b) acting as guarantor in respect of loan relationships, derivative contracts, finance leases or other liabilities of other companies where the whole, or substantially the whole, of the company's rights in respect of the guarantee (including any right of subrogation) form the whole or part of the security for the capital market arrangement.

Meaning of "asset-holding company"

6.—(1) For the purposes of these Regulations an "asset-holding company" means a company that meets conditions A and B.

(2) Condition A is that the company's business, apart from any incidental activities, consists in acquiring, holding and managing financial assets forming the whole or part of the security for a capital market arrangement entered into by a note-issuing company.

(3) Condition B is that the company's liabilities representing debtor relationships are owed wholly or mainly to a note-issuing company or intermediate borrowing company.

Meaning of "intermediate borrowing company"

7.—(1) For the purposes of these Regulations an "intermediate borrowing company" means a company that meets conditions A and B.

(2) Condition A is that the company's only business, apart from any incidental activities, is to enter into and be a party to creditor relationships with—

(a) an asset-holding company,

(b) a company that would be an asset-holding company if the assets forming the security for the capital market arrangement were financial assets,

(c) a partnership that would be an asset-holding company if it were a company and the assets forming the security for the capital market arrangement were financial assets, or

(d) another intermediate borrowing company.

(3) Condition B is that the company's liabilities representing debtor relationships are owed wholly or mainly to a note-issuing company or another intermediate borrowing company.

Meaning of "warehouse company"

8. For the purposes of these Regulations a "warehouse company" means a company whose business, apart from any incidental activities, consists in acquiring and holding financial assets for the purpose—

(a) of transferring them to a company (whether or not yet in existence) that at the time of the transfer is, or as a result of the transfer will become, an asset-holding or note-issuing company, or

(b) of itself becoming an asset-holding or note-issuing company.

Meaning of "commercial paper funded company"

9. For the purposes of these Regulations a "commercial paper funded company" means—

(a) a company that was an asset-holding company but whose obligations under debtor relationships to a note-issuing company or intermediate borrowing company—

(i) have been transferred to, or

(ii) have been replaced by obligations under debtor relationships to,

one or more companies carrying on a business of banking, or

(b) a company that was an intermediate borrowing company but whose obligations under debtor relationships to a note-issuing company—

(i) have been transferred to, or

(ii) have been replaced by obligations under debtor relationships to,

one or more companies carrying on a business of banking.

Meaning of "retained profit"

10.—(1) For the purposes of these Regulations the "retained profit" of a securitisation company for an accounting period is the amount required by the capital market arrangement or a related transaction to be retained, made available to be retained, or designated as profits of the securitisation company (however described).

(2) If retained profit relates to two or more accounting periods, it shall be apportioned on a just and reasonable basis between them.

(3) If in an accounting period the securitisation company has insufficient funds available to meet the retained profit required by the capital market arrangement or a related transaction—

(a) the amount of the retained profit for the purposes of these Regulations is the amount actually retained as profit for that accounting period, and

(b) in a later accounting period the amount of the retained profit may be increased by up to the amount of the shortfall in the earlier period.

Companies to which specified regulations do not apply

Securitisation companies that do not meet the payments condition

11.—(1) The specified regulations do not apply to a securitisation company that—

(a) does not meet the payments condition, or

(b) at any time has not met the payments condition.

(2) The payments condition is that in any accounting period R is equal to or less than the sum of P + RA + RP

(3) In paragraph (2)—

R is, subject to paragraph (6), the aggregate of—

(a) amounts received by the securitisation company in the accounting period, and

(b) amounts which have been—

(i) retained as RA in that accounting period, or

(ii) taken into account as RA for the purposes of this regulation in a previous accounting period,

where those amounts are no longer reasonably required to be retained as RA;

P is the aggregate amount of—

(a) payments made by the securitisation company in the accounting period and the following 18 months except payments which have already been taken into account for the purposes of this regulation for a previous accounting period, and

(b) payments made by the securitisation company in the previous accounting period but not taken into account for the purposes of this regulation;

RA is the aggregate of amounts retained by the securitisation company in the accounting period, which have not already been taken into account for the purposes of this regulation in a previous accounting period, which are reasonably required to—

(a) provide for losses or expenses arising from the company's business, or

(b) maintain or enhance the company's creditworthiness; and

RP is the amount of the retained profit of the securitisation company in the accounting period.