STATUTORY INSTRUMENTS

2019 No. 1251

CORPORATION TAX

The Hybrid and Other Mismatches (Financial Instrument: Exclusions) Regulations 2019

Made - - - -	*9th September 2019*
Laid before the House of Commons	*10th September 2019*
Coming into force - -	*29th November 2019*

The Treasury, in exercise of the power conferred by section 259N(3)(b) of the Taxation (International and Other Provisions) Act 2010(**a**), make the following Regulations.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Hybrid and Other Mismatches (Financial Instrument: Exclusions) Regulations 2019 and come into force on 29th November 2019.

(2) These Regulations have effect in relation to—

(a) payments(**b**) made on or after 1st January 2019, and

(b) quasi-payments(**c**) in relation to which the payment period(**d**) begins on or after that date.

(3) Where a payment period begins before 1st January 2019 and ends on or after that date ("the straddling period")—

(a) so much of the straddling period as falls before 1st January 2019, and so much of that period as falls on or after that date, are to be treated as separate taxable periods(**e**), and

(b) where it is necessary to apportion an amount for the straddling period to the two separate taxable periods, it is to be apportioned—

(i) on a time basis according to the respective length of the separate taxable periods, or

(ii) if that method would produce a result that is unjust or unreasonable, on a just and reasonable basis.

Interpretation

2. In these Regulations—

"Additional Tier 1 instruments" has the meaning given by section 3(1) of the Banking Act 2009(**f**);

(**a**) 2010 c. 8; section 259N was inserted by paragraph 1 of Schedule 10 to the Finance Act 2016 (c. 24) and was amended by section 19(4) of the Finance Act 2019 (c. 1).
(**b**) "Payment" is defined in section 259NF of the Taxation (International and Other Provisions) Act 2010.
(**c**) "Quasi-payment" is defined in section 259NF of the Taxation (International and Other Provisions) Act 2010.
(**d**) "Payment period" is defined in section 259NF of the Taxation (International and Other Provisions) Act 2010.
(**e**) "Taxable period" is defined in section 259NF of the Taxation (International and Other Provisions) Act 2010.
(**f**) 2009 c. 1; relevant amending instruments are S.I. 2014/3329 and S.I. 2018/1394.

"CDR" means the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)(**a**);

"eligible liabilities" has the meaning given by section 3(1) of the Banking Act 2009;

"own funds" has the meaning given by section 3(1) of the Banking Act 2009;

"Tier 2 instruments" has the meaning given by section 3(1) of the Banking Act 2009;

"Transitional Instrument" means the PRA Rulebook: Solvency II Firms: Transitional Measures Instrument 2015(**b**).

Exclusions from the meaning of "financial instrument"

3. The following are specified exclusions from the meaning of "financial instrument" for the purposes of section 259N(3)(b) of the Taxation (International and Other Provisions) Act 2010—

(a) Additional Tier 1 instruments,

(b) Tier 2 instruments,

(c) an item listed in point (a)(iii) or (b) of Article 69 of CDR which is a Tier 1 item under—

(i) Article 69 or 79 of CDR, or

(ii) rule 4.1 in the Annex to the Transitional Instrument,

(d) an item listed in point (a)(iii) or (b) of Article 72 of CDR which is a Tier 2 item under—

(i) Article 72 or 79 of CDR, or

(ii) rule 4.2 in the Annex to the Transitional Instrument, or

(e) own funds and eligible liabilities which are not excluded under article 123(4) of the Bank Recovery and Resolution (No. 2) Order 2014(**c**).

David Rutley
Rebecca Harris

9th September 2019 — Two of the Lord Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations supplement the definition of "financial instrument" in section 259N of the Taxation (International and Other Provisions) Act 2010 (c. 8) which falls within Part 6A of that Act (hybrid and other mismatches).

Section 259N(1) defines "financial instrument". Under section 259N(3), "financial instrument" does not include a hybrid transfer arrangement (within the meaning given by section 259DB) or anything of a description specified in regulations made by the Treasury. These Regulations specify other things which are not a "financial instrument".

These Regulations have effect in relation to payments made on or after 1st January 2019 and quasi-payments in relation to which the payment period begins on or after that date. Authority for the retrospective effect is given by section 19(8) of the Finance Act 2019 (c. 1).

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

(**a**) OJ L 12, 17.1.2015, p.1.

(**b**) This instrument was made on 17th March 2015 by order of the Board of the Prudential Regulation Authority and is available electronically from: http://www.prarulebook.co.uk/rulebook/Media/Get/4f24735c-d66e-4be7-aa93-6bb0d4c8d2c7/PRA_2015_26/pdf. A hard copy is available for inspection by prior arrangement at the offices of Her Majesty's Revenue and Customs at 100 Parliament Street, London, SW1A 2BQ.

(**c**) S.I. 2014/3348, amended by S.I. 2016/1239; there are other amending instruments but none is relevant.

© Crown copyright 2019

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£4.90

UK201909091024 09/2019 19585

http://www.legislation.gov.uk/id/uksi/2019/1251

ISBN 978-0-11-118991-7

9 780111 189917