



Income Tax Assessment Amendment Regulations 2010 (No. 3)¹

Select Legislative Instrument 2010 No. 73

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Income Tax Assessment Act 1997*.

Dated 14 April 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

NICK SHERRY
Assistant Treasurer

1 Name of Regulations

These Regulations are the *Income Tax Assessment Amendment Regulations 2010 (No. 3)*.

2 Commencement

These Regulations commence on 15 April 2010.

3 Amendment of *Income Tax Assessment Regulations 1997*

Schedule 1 amends the *Income Tax Assessment Regulations 1997*.

Schedule 1 Amendment

(regulation 3)

[1] After regulation 974-135C

insert

974-135D Term cumulative subordinated note

- (1) This regulation applies to an obligation to pay the principal or interest on a relevant term subordinated note at a particular time on or after 1 July 2001.
- (2) For paragraphs 974-135 (8) (a) and (b) of the Act, the fact that the obligation is subject to insolvency or capital adequacy conditions does not in itself prevent it from being a non-contingent obligation.
- (3) For this regulation, a term subordinated note is **relevant** if:
 - (a) at the time of its issue:
 - (i) it does not constitute or meet the requirements of a Tier 1 capital instrument; and

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- (ii) it does not form part of the Tier 1 capital of the issuer of the note, or a connected entity, and the reason for it not doing so is not that the instrument is in excess of the Tier 1 capital required for the purposes of prudential standards that deal with capital adequacy; and
 - (b) it has a term of not more than 30 years; and
 - (c) it does not include an unconditional right to extend the term of the note beyond a total term of 30 years; and
 - (d) it is subject to a condition that any payment of the principal or interest beyond the date on which it would otherwise be payable must accumulate (with or without compounding); and
 - (e) it does not give the issuer of the note an unconditional right to decline to provide a financial benefit that is equal in nominal value to the issue price of the note to settle the obligations under the note.
- (4) For this regulation, conditions applying to the obligation are ***insolvency or capital adequacy conditions*** if they have the effect that the issuer of the note is obliged or able to defer the payment of the principal or interest beyond the date on which it would otherwise be payable if, on that date:
- (a) the issuer of the note is insolvent, or would become insolvent if the payment were made; or
 - (b) if the issuer of the note is an entity that is regulated by the APRA or a comparable foreign regulator — the issuer is in breach of its capital adequacy ratio or would be in breach if the payment were made.
- (5) For this regulation, the issuer of the note is ***insolvent*** if:
- (a) the issuer cannot pay its debts as they fall due; or
 - (b) the issuer's liabilities exceed its assets.

- (6) If the obligation is an obligation to pay at a time before 15 April 2010, this regulation applies only to the extent that applying it would not have the result that:
- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) immediately before 15 April 2010 would be affected so as to disadvantage the person; or
 - (b) liabilities would be imposed on a person (other than the Commonwealth or an authority of the Commonwealth), for anything done or omitted to be done before 15 April 2010.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.