Income Tax Assessment Amendment Regulation 2012 (No. 2)

Select Legislative Instrument 2012 No. 310

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

Dated 6 December 2012

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

DAVID BRADBURY
Assistant Treasurer

1214716A-121126Z

1 Name of regulation

This regulation is the *Income Tax Assessment Amendment Regulation 2012 (No. 2)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Amendment of *Income Tax Assessment Regulations 1997*

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

Schedule 1 Amendments

(section 3)

[1] Regulation 974-135D, heading

substitute

974-135D Term cumulative subordinated note with insolvency or capital adequacy conditions

[2] Regulation 974-135E, heading

substitute

974-135E Perpetual cumulative subordinated note with profitability, insolvency or negative earnings conditions

[3] After regulation 974-135E

insert

974-135F Term cumulative subordinated note with non-viability condition

(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 the day this regulation commences.

(2) For paragraphs 974-135 (8) (a) and (b) of the Act, the fact that the obligation is subject to a non-viability condition does not in itself prevent the obligation from being a non-contingent obligation.

(3) In this regulation, a term subordinated note is ***relevant*** if:

(a) it is issued by an entity regulated for prudential purposes by APRA or a subsidiary of an entity that is regulated for prudential purposes by APRA; and

(b) when it is issued:

(i) it does not constitute or meet the requirements of a Tier 1 capital instrument; and

(ii) it does not form part of the Tier 1 capital of the issuer of the note, 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

(c) it has a term of no more than 30 years, and 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, unless a non-viability trigger event occurs, 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.

Note for paragraph (b) Whether the note constitutes or meets the requirement of a Tier 1 capital instrument, or forms part of the Tier 1 capital of the issuer, is determined under the prudential standards that apply to the issuer.

(4) In this regulation, a condition applying to the obligation is a ***non-viability condition*** if the condition has the effect that the note must be written off or converted into ordinary shares of the issuer of the note or a parent entity of the issuer if a non-viability trigger event occurs.

(5) In this regulation, a ***non-viability trigger event***, in relation to a note, is any of the following:

(a) APRA or a comparable foreign regulator issues a notice, in writing, to the issuer of the note stating that conversion or write-off of capital instruments issued by the issuer is necessary because, without it, APRA or the foreign regulator considers that the issuer will become non-viable;

(b) APRA or a comparable foreign regulator determines, in writing given to the issuer of the note, that without an injection of capital, or equivalent support, from the public sector the issuer will become non-viable;

(c) APRA or a comparable foreign regulator issues a notice, in writing, to a parent entity of the issuer of the note stating that conversion or write-off of capital instruments is necessary because, without it, APRA or the foreign regulator considers that the parent entity or the issuer will become non-viable;

(d) APRA or a comparable foreign regulator determines, in writing given to a parent entity of the issuer of the note, that without an injection of capital, or equivalent support, from the public sector the parent entity or the issuer will become non-viable.