

2016 No. 0000

INCOME TAX

CAPITAL GAINS TAX

**The Individual Savings Account (Amendment No.2)
Regulations 2016**

Made - - - - - ***
Laid before the House of Commons ***
Coming into force - - - [6th April 2016]

The Treasury make these Regulations exercising the powers in sections 694 to 699 and 701 of the Income Tax (Trading and Other Income) Act 2005(a) and section 151 and 152 of the Taxation of Chargeable Gains Act 1992(b).

Citation and commencement

1. These Regulations may be cited as the Individual Savings Account (Amendment No.2) Regulations 2016 and come into force on [6th April 2016].

Amendment of the Individual Savings Account Regulations 1998

2. The Individual Savings Account Regulations 1998(c) are amended as follows.

3. In regulation 2(1)(a) (interpretation)—

(a) in the definition of “account investment”, for “or a cash component, as the case may be, within the meaning of regulation 7 or 8” substitute “, a cash component or an innovative finance component, as the case may be, within the meaning of regulation 7, 8 or 8A”;

(b) at the appropriate places insert—

““article 36H agreement” means an article 36H agreement (within the meaning of article 36H of the Regulated Activities Order 2001) which has been entered into by an investor as lender with the facilitation of an operator with permission to carry on a regulated activity of the kind specified by that article;”;

“borrower” is to be construed in accordance with article 36H(4) of the Regulated Activities Order 2001;

(a) 2005 c. 5; amendments made by the Commissioners for Revenue and Customs Act 2005 (c. 11), Schedule 4, paragraph 132; the Finance Act 2008 (c. 9), section 40; the Finance Act 2011 (c. 11), section 40.

(b) 1992 c. 12; amendments made by the Finance Act 1993 (c. 34), section 85; the Finance Act 1995 (c. 4), section 64(2); the Income Tax (Taxation of Trading and Other Income) Act 2005, Schedule 1, paragraph 426; the Finance Act 2011, section 40(6).

(c) S.I.1998/1870.

“credit” is to be construed in accordance with article 60L of the Regulated Activities Order 2001;

“debt collector” means an authorised person with permission to carry on a regulated activity of the kind specified in article 39F and 39G of the Regulated Activities Order 2001;

“lender” is to be construed in accordance with article 36H(4) of the Regulated Activities Order 2001;

“operator” means a person who has permission (other than an interim permission) under part 4A of FISMA 2000 to carry on the regulated activity specified in article 36H of the Regulated Activities Order 2001”;

“outstanding principal balance” means the amount of capital and interest the borrower owes the investor under an article 36H agreement at any time;

“Regulated Activities Order 2001” means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(a);

4. In regulation 2(2)(definitions), at the appropriate places in the Table insert—

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5. In regulation 2D (regulations that do not apply to junior ISA accounts), after “7(2)(h),” insert “8A,”.

6. In regulation 4 (general conditions for accounts)—

(a) in paragraph (1), for “and in respect of which—” substitute “which is an innovative finance account or in respect of which—”;

(b) after paragraph (1) insert—

“(1ZA) An innovative finance account is an account in respect of which—

(a) the conditions and requirements in paragraphs (1A)(a) and (ca); (5); (6)(a), (b), (e) and (g) are fulfilled;

(b) the application to open the account is made in accordance with regulation 12;

(c) the conditions in paragraph (1B) (ba) to (e) are fulfilled; and

(d) in relation to cash held in an account, the conditions in paragraphs (6)(f) and (fa) and (7) are fulfilled.”;

(c) in paragraph (1A)—

(i) in sub-paragraph (a) for “or a cash account” substitute “, a cash account or an innovative finance account”;

(ii) after sub-paragraph (c) insert—

“(ca) an innovative finance account is made up of a single innovative finance component only;”;

(d) in paragraph (1B), after sub-paragraph (b), insert—

“(ba) except for a replacement subscription(b), a qualifying individual who is 18 or over may only subscribe to a single innovative finance account in a particular year;”;

(a) S.I. 2001/544.

(b) “replacement subscription” has the meaning to be given in Regulation 5DDB by The Individual Savings Account (Amendment) Regulations 2016. [A draft of these regulations was consulted on between 13th October and 8th November. These Regulations have not yet been made].

- (e) in paragraph (6)(b)—
 - (i) in paragraph (i) at the beginning insert “subject to paragraph (ib)”;
 - (ii) at the end of paragraph (ia) omit “and”; and
 - (iii) after paragraph (ia) insert—

“(ib)in relation to an innovative finance account, the person who has the right to exercise the rights and duties of the lender under an article 36H agreement shall be the account manager, his nominee, a company which is a 51% subsidiary of the account manager or the account investor or the right to exercise the rights and duties of the lender shall be held jointly by the account investor and either the account manager, his nominee or a company which is a 51% subsidiary of the account manager; and”

7. In regulation 4A—

- (a) in paragraph (1), in the paragraph under the heading first condition—
 - (i) for “or (b)” substitute “,(b) or (ba)”;
 - (ii) for “and a single stocks and shares account” substitute “, a single stocks and shares account and a single innovative finance account”;
- (b) in paragraph (1), in the paragraph under the heading second condition, for “or (b)” substitute “,(b) or (ba)”
- (c) in paragraph (3), for “or (b)” substitute “,(b) or (ba)”.

8. For regulation 5DD (defaulted investment payment), substitute—

“A defaulted investment payment occurs where a payment is made (otherwise than by accretion) by way of compensation in respect of the poor performance, loss (in whole or in part), depreciation or risk of depreciation of an investment (“defaulted investment”)—

- (a) described in regulation 7 held in a stocks and shares account (whether or not the defaulted investment continues to be held in the account at the time of the payment);
- (b) described in regulation 8A held in an innovative finance account (whether or not the defaulted investment continues to be held in the account at the time of the payment);”

9. In regulation 5DDA (additional permitted subscription to an account other than a junior ISA account)—

- (a) in paragraph (2)(e), after paragraph (iv) insert—
 - “(v) in the case of an innovative finance account where the article 36H agreement to which the deceased’s account relates is facilitated by the deceased’s account manager, that manager’s nominee, a 51% subsidiary of the deceased’s account manager or jointly by one of them and another (“the agreement facilitator”), paragraph (iv) shall apply as if the title to the non-cash asset is vested in the agreement facilitator.”;

- (b) after paragraph (3) insert—
 - “(3A) in respect of an innovative finance account, for the purposes of paragraph (3) the value of the account at the date of the deceased’s death is the combined value of the outstanding principal balance in respect of the article 36H agreements facilitated by the deceased’s account manager and cash deposited in accordance with regulation 6(4) to (6);”

- (c) in paragraph (11)(b), after (ii) insert—
 - “(iii) the right to exercise the rights and duties of the lender in respect of the outstanding principal balance under an article 36H agreement; and”.

10. In regulation 5DF(1)(b)(iii), after “stocks and shares” insert “or innovative finance”.

11. In regulation 6 (general investment rules)—

- (a) in paragraph (1), for “All” substitute “Subject to paragraph (1ZB), all”
- (b) after paragraph (1ZA) insert—

“(1ZB) Where an investment is made of a type described at regulation 8A(2)(a), the amount of the payments made pursuant to the article 36H agreement must be such as might reasonably be expected to be made under such an agreement if entered into in the open market.”

- (c) after paragraph (2) insert—

“(2A) Where the right to exercise the rights and duties of the lender under an article 36H agreement is sold or otherwise transacted, that sale or transaction shall be made at a price for which the investment might reasonably be expected to be sold or otherwise transacted, as the case may be, on the open market.”

12. After regulation 8 insert—

“Qualifying investments for an innovative finance component

8A.—(1) This regulation specifies the kind of investments (“qualifying investments for an innovative finance component”) which may be purchased, made or held under an innovative finance component.

(2) Qualifying investments for an innovative finance component to which paragraph (1) refers are—

- (a) payments by a borrower made under an article 36H agreement where the conditions in paragraph (b) are met;
- (b) the conditions in this paragraph are—
 - (i) the payment is a payment of interest or capital or both;
 - (ii) the article 36H agreement requires such payment to be made directly to the account manager;
 - (iii) the article 36H agreement is made on genuine commercial terms; and
 - (iv) the article 36H agreement is not part of a scheme or arrangement the main purpose or one of the main purposes of which is the avoidance of tax;
- (c) payment by an assignee directly to an account manager for the right to exercise the rights and duties of the lender under an article 36H agreement where the conditions in paragraph (b)(iii) to (iv) are met;
- (d) payment by a novatee directly to an account manager in respect of the novation of an article 36H agreement where the conditions in paragraph (b)(iii) to (iv) are met;
- (e) cash deposited in accordance with regulation 6(4) to (6).”

13. In regulation 10(2) (qualifying individuals who may invest under an account)—

- (a) in sub-paragraph (a), after “stocks and shares account” insert “or innovative finance account”;
- (b) after sub-paragraph (c) insert—

“(cza)who, except for a replacement subscription, in the case of an innovative finance account, has not subscribed, and will not subscribe, to any other innovative finance account, in the year in which the subscription is made;”.

14. In regulation 12(3) (conditions for application to open an account)—

- (a) in sub-paragraph (a) for “or cash account” substitute “, cash account or innovative finance account”;
- (b) after sub-paragraph (e) insert—

“(eza)in the case of an innovative finance account, the applicant, except for a subscription made in accordance with regulation 5D—

- (i) has not subscribed, and will not subscribe, to any other innovative finance account, in the year to which paragraph (2) refers, and
- (ii) will not subscribe to any other innovative finance account, in each successive year following that year, in which the declaration has effect;”.

15. In regulation 14 (account manager qualifications)—

- (a) in paragraph (2)(b)—
 - (i) in paragraph (i), for “37” substitute “36H, 37, 39G”;
 - (ii) in paragraph (iv), for “or a registered friendly society” substitute “a registered friendly society or a person who holds an interim permission under Chapter 4 of part 8 of the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2013(a) in respect of the provisions listed in paragraph (i) and (ii) above”; and
- (b) in paragraph (3)(a) for “, or both” substitute “or innovative finance accounts only, or any combination of such accounts”.

16. In regulation 21(transfers of accounts)—

- (a) in paragraph (4)—
 - (i) at the end of sub-paragraph (a), omit “or”;
 - (ii) after sub-paragraph (b), insert—
“or
(c) an innovative finance account (if the account investor is 18 years of age or over),”;
- (b) in paragraph (4C)—
 - (i) at the end of sub-paragraph (a), omit “or”;
 - (ii) at the end of sub-paragraph (b), insert “or”; and
 - (iii) after sub-paragraph (b), insert—
“(c) an innovative finance account to an innovative finance account,”
- (c) in paragraph (4DA)—
 - (i) after sub-paragraph (b), insert—
“(ca) an innovative finance account (whether or not in a bulk transfer of accounts) is transferred to an innovative finance account held with the transferee immediately before the time when the transfer is made;”;
 - (ii) in sub-paragraph (d), after “stocks and shares account” insert “or an innovative finance account”;
 - (iii) at the end of sub-paragraph (d) omit “or”;
 - (iv) in sub-paragraph (e), after “cash account” insert “or an innovative finance account”
 - (v) after sub-paragraph (e), insert—
“; or
(f) an innovative finance account is transferred (otherwise than in a bulk transfer of accounts) to either a cash account or a stocks and shares account held with the transferee immediately before the time when the transfer is made.”; and
- (d) in paragraph (6)(b)(i), for “or stocks and shares account” substitute “, stocks and shares account or innovative finance account”.

17. In regulation 31 (returns of information by account manager)—

(a) S.I. 2013/1881

- (a) in paragraph (3)—
 - (i) in sub-paragraph (b)(ii), at the beginning insert “in relation to a cash account or stocks and shares account”;
 - (ii) at the end of sub-paragraph (b)(ii) omit “and”;
 - (iii) after sub-paragraph (b)(ii), insert—
 - “(iii) in relation to an innovative finance account comprising investments of the kind specified at regulation 8A(2)(a), the aggregate of the amounts set out at paragraphs (iv) and (v);
 - (iv) the outstanding principal balance as at 5 April in that year, or the date on which an account manager ceases to act or qualify as an account manager, under those article 36H agreements in respect of which payments are due to be made to the account manager;
 - (v) the amount of cash held in the account as at 5 April in that year, or the date on which an account manager ceases to act or qualify as an account manager.”.
 - (iv) in paragraph (c)(i), for “or stocks and shares account.” substitute “, a stocks and shares account or an innovative finance account”;
- (b) in paragraph (4), after sub-paragraph (c) insert—
 - “(d) the amount at the end of the year or part of the year for which the return is made of account investments held under innovative finance components by him or a nominee for him on behalf of account investors, under all the accounts in respect of which he acted as account manager in that year or part, with separate values for—
 - (i) cash, and
 - (ii) the outstanding principal balance under those article 36H agreements in respect of which payments are due to be made to the account manager.”.
- (c) in paragraph (7)—
 - (i) at the end of sub-paragraph (a)(iv) omit “and”;
 - (ii) after sub-paragraph (a)(iv) insert—
 - “(v) innovative finance accounts, and”
 - (iii) after sub-paragraph (b)(ii) insert—
 - “(iia) to innovative finance components of accounts;”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Individual Savings Account Regulations 1998 (S.I. 1998/1450)(“the principal Regulations”) to provide for innovative finance accounts.

Innovative finance accounts are accounts which enable an investor to pay into an ISA account payments made by a borrower under a loan facilitated by a peer to peer platform.

[TIIN statement]