



HM Revenue
& Customs

Restricting tax relief for banks' compensation payments

Who is likely to be affected?

Banks and building societies within the charge to UK corporation tax.

General description of the measure

This measure denies banks and building societies corporation tax relief for compensation payments, and associated expenditures, relating to misconduct issues.

Policy objective

The measure will ensure that corporation tax receipts are not affected by large compensation payments made in relation to banks' past misconduct and management failures, ensuring that the sector makes an appropriate contribution to restoring the public finances.

Background to the measure

This measure was announced at Budget 2015.

A consultation on the measure's detailed design was published on 26 March 2015 and closed on 29 May 2015.

Detailed proposal

Operative date

This measure applies to compensation expenditure arising after on or after the 8 July 2015. Customers with an accounting period straddling the commencement date are required to apportion expenses between the pre- and post-commencement periods on a just and reasonable basis.

Current law

The current law on calculation of trading profits for corporation tax are contained in Part 3 of the Corporation Tax Act 2009. Within this Part, Chapter 3 contains the basic rules on trade profits, Chapter 4 contains rules restricting deductions, and Chapter 5 contains rules allowing deductions. Rules on specific trades are contained in Chapter 9.

Proposed revisions

Legislation will be introduced in Summer Finance Bill 2015 to insert a new section into Chapter 9 of Part 3 of the Corporation Tax Act 2009. This section will provide that where a banking company (or a company associated with a banking company) incurs expenses in making a compensation payment to a customer in respect of a relevant issue, these expenses may not be deducted in the calculation of corporation tax.

The legislation will apply to companies which, at the time of a relevant issue, were carrying on a trade either as a retail or an investment bank.

An issue is a relevant issue if it relates to a bank's conduct of its banking business, is not an isolated issue and is significant in size, and it is not an excluded issue. Excluded issues include those relating to administrative issues.

There are further provisions to ensure that where payments are made through associated companies, or to third parties which then pay customers directly, tax relief will still be denied. The legislation will cover all direct compensation costs, with a percentage uplift to reflect associated administrative costs.

Summary of impacts

Exchequer impact (£m)	2015-16	2016-17	2017-18	2018-19	2019-20
	+150	+260	+225	+180	+150
	These figures are set out in Table 2.1 of Budget 2015 and have been certified by the Office for Budget Responsibility. More details can be found in the policy costings document published alongside Budget 2015.				
Economic impact	This measure is not expected to have any significant macroeconomic impacts. The costing accounts for a number of behavioural responses that could affect the overall yield.				
Impact on individuals, households and families	This measure will only impact on companies. The measure is not expected to impact on individuals or households, and is not expected to impact on family formation, stability or breakdown.				
Equalities impacts	This measure will only impact on companies. The measure is not expected to have any equalities impacts.				
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses. The affected businesses will be required to identify relevant compensation and associated expenses in order to disallow them for tax purposes, which could lead to system change costs. The measure is not however expected to lead to significant on-going additional administrative costs to affected businesses. This measure is expected to have no impact on civil society organisations.				
Operational impact (£m) (HMRC or other)	It is not anticipated that there will be any implementation costs for HMRC.				
Other impacts	<u>Small and micro business assessment</u> : this measure is expected to have no impact on small and micro businesses Other impacts have been considered and none have been identified.				

Monitoring and evaluation

The measure will be monitored through information collected from corporation tax returns and through communication with affected taxpayer groups.

Further advice

If you have any questions about this change, please contact James Ewington on 03000 553788 or james.ewington@hmrc.gsi.gov.uk

1 Banking companies: expenses relating to compensation

- (1) In CTA 2009, after section 133 insert –

“Banking companies

133A Compensation payments: restriction of deductions

- (1) In calculating the profits of a trade carried on by a company (“company A”) no deduction is allowed for expenses incurred by the company if and so far as –
- (a) the expenses are in respect of amounts of relevant compensation (see subsection (3)), and
 - (b) the disclosure condition is met in relation to the expenses (see section 133C).
- (2) Subsection (1) does not apply to expenses which are excluded by section 133D.
- (3) In relation to company A, “relevant compensation” means compensation which is paid or payable –
- (a) to or for the benefit of a customer of company A in respect of relevant conduct (see subsection (6)) of company A, or
 - (b) to or for the benefit of a customer of a qualifying company in respect of relevant conduct of that qualifying company (but see subsection (4)).
- (4) Compensation paid or payable as mentioned in subsection (3)(b) is not relevant compensation so far as it is paid or payable under arrangements entered into between company A and the qualifying company on arm’s length terms.
- (5) “Qualifying company”, in relation to company A, means a company which is associated with company A (see section 133L) at the time when the expenses in question are recognised for accounting purposes.
- (6) For the purposes of this section conduct of a company is “relevant conduct” if the conduct occurs –
- (a) on or after 29 April 1988, and
 - (b) at a time when the company is a banking company (see section 133E).
- (7) For the purposes of subsection (1) it does not matter whether the compensation is paid, or to be paid, by company A or another person.
- (8) In this section –
- “compensation”, “payment” and references to compensation “paid or payable” in respect of relevant conduct of a company, are to be read in accordance with section 133K;

“conduct” includes any act or omission;
“customer” has the meaning given by section 133J.

133B Companies affected by section 133A: amounts treated as received

- (1) This section applies where a company incurs in an accounting period expenses which would, but for section 133A, be deductible in calculating the profits of a trade carried on by that company.
- (2) An amount equal to 10% of the relevant sum is to be brought into account as a receipt in calculating the profits of the trade.
- (3) The amount is treated as arising at the end of the accounting period.
- (4) In this section “the relevant sum” means the total amount of the expenses which as a result of section 133A are not deductible in calculating the profits of the trade for the accounting period.

133C The disclosure condition

- (1) In relation to expenses incurred by a company (“company A”) in respect of amounts of relevant compensation, the “disclosure condition” is met if—
 - (a) a relevant document indicates that the company—
 - (i) is or has been, or
 - (ii) will or may become,
liable to pay compensation in respect of a particular matter and the relevant compensation can reasonably be regarded as relating to that matter, or
 - (b) a relevant document refers to disciplinary action taken or to be taken by a regulator in respect of a particular matter and the relevant compensation can reasonably be regarded as relating to that matter.
- (2) For the purposes of subsection (1)(a) it does not matter whether the indication is express or implicit (or how it is expressed or conveyed) provided that it is reasonably clear from the relevant document that the company is or has been, or will or may become, liable to pay compensation in respect of the matter concerned.
- (3) In this section “a relevant document” means—
 - (a) relevant accounts,
 - (b) a relevant statutory report, or
 - (c) a relevant listing disclosure.
- (4) For the purposes of this section the following are “relevant accounts” in relation to expenses incurred by company A—
 - (a) company A’s statutory accounts for a relevant period, and
 - (b) relevant consolidated accounts for a relevant period.
- (5) For the purposes of this section, any of the following is a “relevant statutory report” in relation to company A if the report in question is prepared for a relevant period—
 - (a) any published report prepared by the directors of the company for the purposes of any provision of the legislation under which company A is registered or, as the case may be, established;

- (b) any published consolidated report prepared for such purposes, if the company is included in the consolidation.
- (6) In this section “relevant listing disclosure” means a disclosure required—
 - (a) by rules under section 73A of FISMA 2000, or
 - (b) by virtue of a requirement imposed by or under a corresponding provision of the law of a territory outside the United Kingdom,if the disclosure is made not later than the end of the period of account in which the expenses are recognised for accounting purposes.
- (7) In this section “relevant period”, in relation to expenses incurred by company A, means—
 - (a) the period of account in which the expenses are recognised for accounting purposes, or
 - (b) any period which ends not later than the end of that period.
- (8) In this section, in relation to a company—
 - “relevant compensation” has the meaning given by section 133A(3);
 - “statutory accounts” means accounts prepared for the purposes of any provision of the legislation under which the company is registered or, as the case may be, established;
 - “relevant consolidated accounts” means consolidated accounts prepared for any such purposes, if the company is included in the consolidation.

133D Excluded expenses

- (1) Expenses in respect of relevant compensation are excluded by this section if the compensation is in respect of—
 - (a) an administrative error,
 - (b) the failure of a computer or electronic system, or
 - (c) loss or damage which is wholly or mainly attributable to an unconnected third party.
- (2) In subsection (1) “third party” means a person who is neither the company mentioned in section 133A(1) nor (if different) the company in respect of whose conduct the compensation is paid or payable (see section 133A(3)(b)).
- (3) For the purposes of this section a third party (“TP”) is an “unconnected third party” unless—
 - (a) TP was, at the time of the relevant actions, connected with the company mentioned in section 133A(1) or (if different) the company in respect of whose conduct the compensation is paid or payable, or
 - (b) in taking one or more of the relevant actions, TP was acting under arrangements with the company mentioned in paragraph (a) or (as the case may be) either of the companies mentioned in paragraph (a).
- (4) In this section “the relevant actions” means the actions as a result of which the loss or damage is wholly or mainly attributable to TP (and references to actions or the taking of actions include failures to act).

- (5) Section 1122 of CTA 2010 (meaning of “connected persons”) applies for the purposes of this section, but subject to the following modification.
- (6) Section 1122 has effect as if after subsection (8) there were inserted—
 - “(9) A person (“A”) is connected with any person who is an employee of A or by whom A is employed.
 - (10) For the purposes of this section any director or other officer of a company is to be treated as employed by that company.”

133E Meaning of “banking company”

- (1) For the purposes of sections 133A, a company is a “banking company”—
 - (a) at a time when it meets conditions A to D,
 - (b) at a time when it meets condition A and is a member of a partnership which meets conditions B to D, or
 - (c) if it is a building society.

In subsections (2) to (6), “the relevant entity” means the company or partnership.
- (2) Condition A is that the company is not an excluded company (see section 133F).
- (3) Condition B—
 - (a) in relation to any time on or after 1 December 2001, is that the relevant entity is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act);
 - (b) in relation to any time before that date, is that the relevant entity—
 - (i) was at that time an authorised person under Chapter 3 of Part 1 of the Financial Services Act 1986 (persons authorised to carry on investment business),
 - (ii) was authorised under the Banking Act 1987, or
 - (iii) was entitled by virtue of the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218) to accept deposits (within the meaning of the Banking Act 1987) in the United Kingdom.
- (4) Condition C is that—
 - (a) the relevant entity’s activities include the relevant regulated activity described in the provision mentioned in section 133G(1)(a), or
 - (b) the relevant entity is an investment bank (see section 133H) whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in section 133G(1)(b) to (f).
- (5) Condition D is that the relevant entity carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of trade.
- (6) Where the relevant entity carries on activities outside the United Kingdom, Condition B is met—

- (a) in relation to any time on or after 1 December 2001, if the relevant entity would be required to be an authorised person for the purposes of FISMA 2000 (see section 31 of that Act) in order to carry on any of those activities in the United Kingdom at that time;
 - (b) in relation to any time before that date, if in order to carry on those activities in the United Kingdom at that time the relevant entity –
 - (i) would have been required to be an authorised person under Chapter 3 of Part 1 of the Financial Services Act 1986 (persons authorised to carry on investment business), or
 - (ii) would have been required either to be authorised under the Banking Act 1987 or to be entitled by virtue of the Banking Co-ordination (Second Council Directive) Regulations 1992 (S.I. 1992/3218) to accept deposits (within the meaning of the Banking Act 1987) in the United Kingdom.
- (7) In this section “partnership” includes –
- (a) a limited liability partnership, and
 - (b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,
- and “member”, in relation to a partnership, is to be read accordingly.
- (8) For the meaning of “relevant regulated activity”, see section 133G.

133F “Excluded company”

- (1) This section gives the meaning of “excluded company” for the purposes of section 133E.
- (2) A company is an “excluded company” at any time (in an accounting period) when the company is –
- (a) an insurance company or an insurance special purpose vehicle;
 - (b) a company which is a member of a group and does not carry on any relevant regulated activities otherwise than on behalf of an insurance company or an insurance special purpose vehicle which is a member of the group;
 - (c) a company which does not carry on any relevant regulated activities otherwise than as the manager of a pension scheme;
 - (d) an investment trust;
 - (e) a company which does not carry on any relevant regulated activities other than asset management activities;
 - (f) an exempt commodities firm;
 - (g) a company which does not carry on any relevant regulated activities otherwise than for the purpose of trading in commodities or commodity derivatives;
 - (h) a company which does not carry on any relevant regulated activities otherwise than for the purpose of dealing in contracts for differences –
 - (i) as principal with persons all or all but an insignificant proportion of whom are retail clients, or

- (ii) with any other person to enable the company or that other person to deal in contracts for differences as principal with persons all or all but an insignificant proportion of whom are retail clients;
 - (i) a friendly society;
 - (j) a society registered as a credit union under the Co-operative and Community Benefit Societies Act 2014 or the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12));
 - (k) a building society.
- (3) In this section “asset management activities” means activities which consist (or, if they were carried on in the United Kingdom, would consist) of any or all of the following –
 - (a) acting as the operator of a collective investment scheme (see subsection (5)),
 - (b) managing investments on a discretionary basis for clients none of which is a linked entity (see subsection (6)), and
 - (c) acting as an authorised corporate director.
- (4) In subsection (2)(f) “exempt commodities firm” means –
 - (a) in relation to a time on or after 1 January 2014, an exempt IFPRU commodities firm, as defined by the FCA Handbook at that time,
 - (b) in relation to a time on or after 1 April 2013 but before 1 January 2014, an exempt BIPRU commodities firm, as defined by the PRA Handbook at that time,
 - (c) in relation to a time on or after 1 January 2007 but before 1 April 2013, an exempt BIPRU commodities firm, as defined by the Handbook of the Financial Services Authority at that time, and
 - (d) in relation to a time before 1 January 2007, an exempt BIPRU commodities firm as defined by the Handbook of the Financial Services Authority as in force on 1 January 2007.
- (5) In subsection (3)(a) “operator of a collective investment scheme” –
 - (a) in relation to times on and after 25 February 2001, has the same meaning as in Part 17 of FISMA 2000 (see sections 235 and 237 of that Act);
 - (b) in relation to times before that date, has the same meaning as in the Financial Services Act 1986.
- (6) In subsection (3)(b) “linked entity”, in relation to a company (“C”), means –
 - (a) a member of the same group as C;
 - (b) a company in which a company which is a member of the same group as C has a major interest, or
 - (c) a partnership the members of which include an entity –
 - (i) which is a member of the same group as C, and
 - (ii) whose share of the profits or losses of a trade carried on by the partnership for an accounting period of the partnership any part of which falls within the accounting period mentioned in the opening words of subsection (2) is at least a 40% share (see Part 17 for provisions about shares of partnership profits and losses).

- (7) In this section –
- “authorised corporate director” –
 - (a) in relation to any time on or after 1 April 2013, has the meaning given by the FCA Handbook at that time;
 - (b) in relation to any time before 1 April 2013, has the meaning given by the FCA Handbook as in force on 1 April 2013;
 - “contract for differences” has the meaning given by section 582;
 - “the FCA Handbook” means the Handbook made by the Financial Conduct Authority under FISMA 2000;
 - “friendly society” means a registered friendly society or an incorporated friendly society;
 - “group” has the same meaning as in Part 7A of CTA 2010 (see section 269BD of that Act);
 - “incorporated friendly society” means a society incorporated under the Friendly Societies Act 1992;
 - “insurance company” has the meaning given by section 133I;
 - “insurance special purpose vehicle” has the meaning given by section 139 of FA 2012;
 - “major interest” has the same meaning as in Part 5 (see section 473);
 - “partnership” has the same meaning as in section 133E;
 - “the PRA Handbook”, means the Handbook made by the Prudential Regulation Authority under FISMA 2000;
 - “registered friendly society” has the same meaning as in the Friendly Societies Act 1992 (and includes any society that as a result of section 96(2) of the Friendly Societies Act 1992 is treated as a registered friendly society);
 - “relevant regulated activity” has the meaning given by section 133G;
 - “retail client” –
 - (a) in relation to any time on or after 1 April 2013, has the meaning given by the FCA Handbook at that time;
 - (b) in relation to any time before 1 April 2013, has the meaning given by the FCA Handbook as in force on 1 April 2013.

133G Meaning of “relevant regulated activity”

- (1) In sections 133E and 133F “relevant regulated activity” means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) –
- (a) article 5 (accepting deposits);
 - (b) article 14 (dealing in investments as principal);
 - (c) article 21 (dealing in investments as agent);
 - (d) article 25 (arranging deals in investments);
 - (e) article 40 (safeguarding and administering investments);
 - (f) article 61 (regulated mortgage contracts).
- (2) In determining whether an activity carried on at any time before 1 December 2001 was at that time a relevant regulated activity, it is to be

assumed that FISMA 2000 and the order mentioned in subsection (1) were in force in the form in which they had effect on 1 December 2001.

133H Investment bank

- (1) This section gives the meaning of “investment bank” for the purposes of section 133E; and in this section “the relevant entity” has the same meaning as in subsections (2) to (6) of that section.
- (2) At any time on or after 1 January 2014, the relevant entity is an investment bank if—
 - (a) it is both an IFPRU 730k firm and a full scope IFPRU investment firm, or
 - (b) it is designated by the Prudential Regulation Authority under article 3 of the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556) (dealing in investments as principal: designation by PRA).
- (3) At any time on or after 1 January 2007 but before 1 January 2014, the relevant entity was an investment bank if it was both a BIPRU 730k firm and a full scope BIPRU investment firm.
- (4) At any time before 1 January 2007, the relevant entity was an investment bank if it would have been both a BIPRU 730k firm and a full scope BIPRU investment firm if the Handbook of the Financial Services Authority in force on 1 January 2007 had been in force at that earlier time.
- (5) In subsections (2) to (4)—

“IFPRU 730k firm” and “full scope IFPRU investment firm” have the meaning given by the FCA Handbook at the time in question;

“BIPRU 730k firm” and “full scope BIPRU investment firm”—

 - (a) in relation to any time on or after 1 April 2013 have the meaning given by the PRA Handbook at that time;
 - (b) in relation to any time on or after 1 January 2007 but before 1 April 2013, have the meaning given by the Handbook of the Financial Services Authority at that time;
 - (c) in relation to any time before 1 January 2007, have the meaning given by the Handbook of the Financial Services Authority as in force on 1 January 2007.
- (6) If the relevant entity would at any time be an investment bank under subsection (2)(a), (3) or (4) by virtue of activities carried on in the United Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom, the relevant entity is to be treated for the purposes of section 133E as being an investment bank.
- (7) In this section—

“the FCA Handbook” means the Handbook made by the Financial Conduct Authority under FISMA 2000;

“the PRA Handbook” means the Handbook made by the Prudential Regulation Authority under FISMA 2000.

133I Meaning of “insurance company”

- (1) For the purposes of section 133F a person who carries on the activity of effecting or carrying out contracts of insurance is an “insurance company” if –
 - (a) the person has permission under Part 4A of FISMA 2000 to carry on that activity,
 - (b) the person is of the kind mentioned in paragraph 5(d) or (da) of Schedule 3 to FISMA 2000 (EEA passport rights) and carries on that activity in the United Kingdom through a permanent establishment there, or
 - (c) the person qualifies for authorisation under Schedule 4 to FISMA 2000 (Treaty rights) and carries on that activity in the United Kingdom through a permanent establishment there.
- (2) In relation to times in the period beginning with 1 December 2001 and ending with 31 March 2013, the reference in subsection (1)(a) to Part 4A of FISMA 2000 is to be read as a reference to Part 4 of that Act
- (3) In relation to times before 1 December 2001, this section has effect as if the following were substituted for subsection (1) –
 - “(1) For the purposes of section 133F a person who carries on the activity of effecting or carrying out contracts of insurance is an “insurance company” if the person is –
 - (a) authorised under section 3 or 4 of the Insurance Companies Act 1982, or
 - (b) an EC company within the meaning of the Insurance Companies Act 1982 which, by virtue of paragraph 1 or 8 of Schedule 2F to that Act, was able to carry on direct insurance business through a branch in the United Kingdom or provide insurance in the United Kingdom.”

133J Meaning of “customer”

- (1) For the purposes of section 133A, a person (“P”) is a “customer” in relation to a company (“company A”) if –
 - (a) P uses, has used or may have contemplated using a financial service provided by company A, or
 - (b) has relevant rights or interests in relation to a financial service provided by company A.
- (2) In subsection (1) “financial service” means a service provided –
 - (a) in carrying on regulated activities,
 - (b) in communicating, or approving the communication by others of, invitations or inducements to engage in investment activity, or
 - (c) in providing relevant ancillary services (if company A is an investment firm or credit institution).
- (3) P has a “relevant right or interest” in relation to any service if P has a right or interest –
 - (a) which is derived from, or is otherwise attributable to, the use of the service by another person, or

- (b) which may be adversely affected by the use of the service by persons acting on P's behalf or in a fiduciary capacity in relation to P.
- (4) If company A is providing a service as a trustee, the persons who are, have been, or may have been, beneficiaries of the trust are to be treated as persons who use, have used, or may have contemplated using, the service.
- (5) A person who deals with company A in the course of company A providing a service is to be treated as using the service.
- (6) In this section –
 - “credit institution” has the meaning given by section 1H(8) of FISMA 2000;
 - “engage in investment activity” has the meaning given in section 21 of FISMA 2000;
 - “investment firm” has the same meaning as in FISMA 2000 (see section 424A of that Act);
 - “regulated activities” has the same meaning as in FISMA 2000 (see section 22 of that Act);
 - “relevant ancillary services” means has the meaning given by section 1H(8) of FISMA 2000.

133K “Compensation” and related expressions

- (1) In sections 133A to 133D references to compensation which is paid or payable “in respect of” relevant conduct include compensation which is paid (or to be paid) –
 - (a) in connection with a claim by the customer for compensation in respect of the conduct, or
 - (b) in circumstances where there is reason to suspect that company A may (or might in the absence of the payment) be or become liable to pay compensation in respect of relevant conduct –
 - (i) to the customer, or
 - (ii) in one or more of a class of cases which includes the customer's case.
- (2) In sections 133A to 133D and this section “compensation” includes any form of redress, whether monetary or non-monetary, and accordingly includes interest.
References in those sections to “payment” are to be interpreted accordingly.
- (3) In subsection (1) –
 - “claim” includes any claim or request, however made;
 - “customer” has the meaning given by section 133J;
 - “relevant conduct” is to be interpreted in accordance with section 133A(6).

133L Associated companies

- (1) For the purposes of section 133A a company (“company B”) is associated with another company (“company A”) at a time (“the relevant time”) if any of the following 5 conditions is met.

- (2) The first condition is that the financial results of company A and company B, for a period that includes the relevant time, meet the consolidation condition.
- (3) The second condition is that there is a connection between company A and company B for the accounting period of company A in which the relevant time falls.
- (4) The third condition is that, at the relevant time, company A has a major interest in company B or company B has a major interest in company A.
- (5) The fourth condition is that –
 - (a) the financial results of company A and a third company, for a period that includes the relevant time, meet the consolidation condition (see subsection (7)), and
 - (b) at the relevant time the third company has a major interest in company B.
- (6) The fifth condition is that –
 - (a) there is a connection (see subsection (9)) between company A and a third company for the accounting period of company A in which the relevant time falls, and
 - (b) at the relevant time the third company has a major interest in company B.
- (7) In this section, the financial results of any two companies for any period meet the “consolidation condition” if –
 - (a) they are required to be comprised in group accounts,
 - (b) they would be required to be comprised in group accounts but for the application of an exemption, or
 - (c) they are in fact comprised in such accounts.
- (8) In subsection (7), “group accounts” means accounts prepared under –
 - (a) section 399 of the Companies Act 2006, or
 - (b) any corresponding provision of the law of a territory outside the United Kingdom.
- (9) Sections 466 to 471 (companies connected for accounting period) apply for the purposes of this section.
- (10) In this section “major interest” has the same meaning as in Part 5 (see section 473).

133M Powers to amend

- (1) The Treasury may by regulations make such amendments of sections 133A to 133L as they consider appropriate in consequence of –
 - (a) any change made to, or replacement of, the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I. 2001/544) or the Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 (S.I. 2013/556) (or any replacement);
 - (b) any change made to, or replacement of, the FCA Handbook or the PRA Handbook (or any replacement);

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- (c) any regulatory requirement, or change to any regulatory requirement, imposed by EU legislation, or by or under any Act (whenever adopted, enacted or made).
 - (2) The Treasury may by regulations –
 - (a) amend sections 133A(1) and 133C for the purpose of varying the class of expenses to which section 133A(1) applies;
 - (b) amend section 133D for the purpose of adding cases to those for the time being listed in subsection (1) of that section;
 - (c) amend section 133D for any other purpose;
 - (d) amend any of sections 133E to 133I.
 - (3) Regulations under this section may include transitional provision.
 - (4) A statutory instrument containing only regulations under subsection (1) or (2)(b) is subject to annulment in pursuance of a resolution of the House of Commons.
 - (5) Any other statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
 - (6) In this section –
 - “the FCA Handbook” means the Handbook made by the Financial Conduct Authority under FISMA 2000 (as that Handbook has effect from time to time);
 - “the PRA Handbook” means the Handbook made by the Prudential Regulation Authority under FISMA 2000 (as that Handbook has effect from time to time).”
 - (2) The amendment made by this section has effect in relation to accounting periods beginning on or after 8 July 2015.
 - (3) Subsection (4) applies where a company has an accounting period beginning before 8 July 2015 and ending on or after that date (“the straddling period”).
 - (4) For the purposes of sections 133A to 133M of CTA 2009 –
 - (a) so much of the straddling accounting period as falls before 8 July 2015 and so much of that period as falls on or after that date, are treated as separate accounting periods, and
 - (b) any amounts brought into account for the purposes of calculating for corporation tax purposes the profits of a trade for the straddling accounting period are apportioned to the two separate accounting periods on such basis as is just and reasonable.

Explanatory Note

Clause: Banking companies: expenses relating to compensation

Summary

1. This clause denies corporation tax relief for expenses on compensation payments made by banks to customers in respect of certain defined issues. The legislation will have effect for expenses incurred on or after 8 July 2015.

Details of the clause

2. Paragraph 1 inserts new sections 133A-M into Corporation Tax Act (CTA) 2009.

Section 133A

3. New section 133A provides that no deduction may be made by a company in calculating corporation tax profits for expenses which relate to certain types of compensation.
4. Subsection (1) contains the main operative provision, which ensures that there is no deduction available for relevant compensation expenses within the meaning of subsection (3), where the disclosure condition in new section 133C is met.
5. Subsection (2) provides that subsection (1) does not apply to administrative expenses, expenses in respect of the failure of a computer or electronic system, or expenses which arise from loss or damage wholly or mainly attributable to a third party. These expenses are defined in new section 133D.
6. Subsection (3) ensures that a deduction is denied both where the company making or liable to the payment is the company which has relevant conduct, and where a company associated with that company is making or liable to the payment, subject to subsection (4). It does not matter whether the payment is made or to be made directly or indirectly to the customer.
7. Subsection (4) prevents a second disallowance where an associated company incurs expenses but there is an arm's length arrangement, such as a recharge of the expenses, in place. However, expenses incurred by the company with the relevant conduct (that is a party to the arm's length arrangement) will continue to be relevant compensation for the purposes of the provision.
8. Subsection (5) provides that "qualifying company" means a company associated at the time that the expenses in question are recognised for accounting purposes.
9. Subsection (6) provides that "relevant conduct" is any conduct which takes place at a time after 29 April 1988 when the company is a banking company within the meaning of new section 133E.
10. Subsection (7) confirms that the expenses are disallowed whether the compensation is or is to be made by the company or by another person.

11. Subsection (8) sets out further definitions.

Section 133B

12. New section 133B provides that companies with expenses disallowed under section 133A must also take into account a notional receipt in the same period as that in which the expenses are disallowed. This provision ensures that a charge equivalent to the administrative and other costs associated with making the compensation is taken into account in calculating taxable profits.
13. Subsection (1) sets out the application of the section.
14. Subsection (2) confirms that the amount of the receipt to be taken into account is 10% of the expenses disallowed by new section 133A. This amount is to be brought into account as a trade receipt.
15. Subsections (3) and (4) provide further interpretative provisions.

Section 133C

16. New section 133C defines the disclosure condition for the purposes of new section 133A.
17. Subsection (1) explains that the disclosure condition is met where a company has provided for, disclosed, or referred to the compensation expenses in question, or to a class of expenses to which the compensation expenses belong, within a relevant document, subject to certain conditions. These would include compensation expenses relating to issues such as the mis-selling of payment protection insurance.
18. Subsection (2) provides that the indication in subsection (1) need not be explicit, providing that it is relatively clear.
19. Subsection (3) defines "a relevant document", which includes "relevant accounts", defined at subsection (4), "a relevant statutory report", defined at subsection (5), or "a relevant listing disclosure", defined at subsection (6).
20. Subsection (7) explains that the disclosure may have been made in the current or a previous period.
21. Subsection (8) provides further definitions.

Section 133D

22. New section 133D explains which expenses are excluded from being disallowed under new section 133A. These types of expenses are not specific to the banking sector and are intended to be excluded from the scope of the measure.
23. Subsection (1) provides that the expenses which are to be excluded are expenses in respect of administrative errors, failures of computer or electronic systems, or loss or damage caused by a person not connected with the bank and acting independently of the bank.
24. Subsections (2) and (3) explain the meaning of "unconnected third party" for the purposes of new section 133D. The connection between parties is to be determined at the point at which the actions giving rise to the compensation arose.
25. Subsection (4) defines "the relevant actions" for the purposes of new section 133D.
26. Subsection (5) imports the definition of "connected persons" from section 1122 CTA 2010, as modified by subsection (6).

Section 133E

27. New section 133E defines "banking company" for the purposes of new section 133B and new section 133C. The definition applies to all companies wherever located.
28. Subsection (1) provides that certain conditions further specified in this section must be met for a company to be a banking company. Conditions A, C and D are applied to all banks. Condition B is applied by subsection (3) to UK companies and permanent establishments, and by subsection (6) to non-UK companies, which are required to hypothecate their non-UK activities into the UK for this purpose.
29. Subsection (2) provides Condition A, which is that the company in question is not a banking company if it is an excluded company within the meaning of new section 133F.
30. Subsection (3) provides Condition B as it applies to UK companies and permanent establishments, by reference to the UK regulatory framework.
31. Subsection (4) provides Condition C, which is that the company's activities must either include deposit-taking, or must wholly or mainly include one of the other relevant regulated activities set out in new section 133G(1).
32. Subsection (5) provides Condition D, which is that the entity must carry on its relevant regulated activity or activities wholly or mainly in the course of trade.
33. Subsection (6) provides condition B as it applies to non-UK companies. Condition B is deemed to be met for non-UK companies which would meet certain conditions were they carrying on their activities in the UK.
34. Subsections (7) and (8) contain further definitional and interpretative provisions.

Section 133F

35. New section 133F list the circumstances where a company is to be treated as an "excluded company" for the purpose of new section 133E. This list excludes specific businesses which are not intended to be within the scope of the definition of a bank.
36. Subsection (1) explains the section.
37. Subsection (2) provides a list of companies which are excluded companies, including insurance companies, friendly societies and credit unions.
38. Subsections (3) to (7) set out further definitional and interpretative provisions including for how the definitions are to be interpreted at different times.

Section 133G

39. New section 133G defines "relevant regulated activity" for the purposes of new section 133E and new section 133F.
40. Subsection (1) sets out the scope of the section by reference to specified regulated activities.
41. Subsection (2) explains how to apply the definition to periods before 1 December 2001.

Section 133H

42. New section 133H provides the definition of investment bank for the purposes of new section 133E. This definition covers specific types of entity which are regulated by the Financial Conduct Authority or the Prudential Regulation Authority, or which were previously regulated by the Financial Services Authority.
43. Subsections (2) to (4) modify the definition for different time periods.

44. Subsection (5) explains terms used within subsections (2) to (4), including as they are to be applied at different times.
45. Subsection (6) extends the definition to companies carrying on activities in the UK but with a registered office or head office overseas.

Section 133I

46. New section 133I defines "insurance company" for the purposes of new section 133F.
47. Subsection (1) sets out the general definition by reference to the Financial Services and Markets Act 2000.
48. Subsections (2) and (3) explain how the definition is to be applied at different times.

Section 133J

49. New section 133J defines "customer" for the purposes of determining whether compensation is paid or payable to a customer of a given company.
50. Subsection (1) provides the general definition of a customer as a person who uses, has used or may have contemplated using, or who has relevant rights or interests in relation to, a financial service.
51. Subsection (2) defines "financial service".
52. Subsection (3) provides for situations where a person may have rights or interests in relation to a service. This would include the case of intermediaries.
53. Subsections (4) to (6) contain further definitional and interpretative provisions relating to the definition of customer.

Section 133K

54. New section 133K explains the scope of the meaning of "compensation" and related expressions.
55. Subsection (1) contains the relevant interpretative provisions for compensation paid or payable "in respect of" relevant conduct, for the purposes of new section 133A. This would include voluntary, discretionary or ex gratia payments in lieu or expectation of compensation.
56. Subsection (2) contains the relevant interpretative provisions for "compensation" in new section 133B and new section 133C. These include that interest and other forms of redress are included within the meaning of compensation. Compensation includes any amount relating to expenses incurred by a customer in pursuing a claim.
57. Subsection (3) contains further definitional and interpretative provision.

Section 133L

58. New section 133L explains the meaning of associated companies for the purposes of new section 133A.
59. Subsection (1) provides that a company is associated with another company at a given time if any of five conditions is met.
60. Subsections (2) - (6) set out the conditions.
61. Subsections (7) and (8) set out further definitional provisions for the purposes of new section 133L.
62. Subsection (9) applies sections 466 - 471 CTA 2009 to new section 133L.

63. Subsection (10) imports the meaning of "major interest" from section 473 CTA 2009.

Section 133M

64. New section 133M provides power to make changes to the legislation where these are required as a consequence of changes to the regulatory legislation, guidance or requirements or to make changes to the scope of the provisions.
65. Subsection (1) explains the scope of consequential changes which may be made under this power.
66. Subsection (2) explains the scope of other changes which may be made under this power.
67. Subsection (3) clarifies that regulations under the section may include transitional provision.
68. Subsections (4) and (5) explain the Parliamentary procedures applicable to regulations made under the relevant subsections. Consequential changes and extensions of the scope of excluded expenses in new section 133D are subject to negative procedure, with other changes subject to affirmative procedure.
69. Subsection (6) defines "the FCA Handbook" and "the PRA Handbook".
70. Paragraph 2 provides the commencement provision.
71. Paragraph 3 provides that paragraph 4 applies to companies with accounting periods straddling the commencement date.
72. Paragraph 4 provides that apportionment is to be made between the pre- and post-commencement periods on a just and reasonable basis.

Background note

73. This measure was announced at Budget 2015. These changes have been introduced to restrict the tax deductibility of banks' compensation expenses in respect of certain conduct issues.