



HM Revenue
& Customs

Taxation of hybrid capital instruments: Amendment to definition

Who is likely to be affected

Corporate issuers and holders of hybrid capital instruments (certain types of debt instruments that have some equity-like features).

General description of the measure

This amendment to the rules that provide certainty of tax treatment for hybrid capital will prevent instruments falling outside the rules merely because they include in their terms typical provisions for takeover or change of control of the issuer.

Policy objective

This ensures the new rules for the taxation of hybrid capital instruments that took effect from 1 January 2019 (and 12 February 2019 in relation to stamp duty and stamp duty reserve tax) work as intended for instruments which include common terms providing for takeover or change of control of the issuer.

Background to the measure

New rules on taxation of hybrid capital instruments were enacted in Schedule 20 of Finance Act 2019 and apply from 1 January 2019 (and 12 February 2019 in relation to stamp duty and stamp duty reserve tax). If these instruments meet certain specified conditions then any interest payable is deductible for the issuer and taxable for the holder and no Stamp Duty or Stamp Duty Reserve Tax is payable on transfers of the instruments.

A [tax information and impact note](#) was published on 29 October 2018 and gives further information on the background to the rules.

Conditions in the rules exclude certain debt instruments which the rules were intended to cover. This measure corrects the scope of the rules.

The amendment was announced on 18 April 2019 by way of a revision to the [hybrid capital instruments technical note](#) originally published on 29 October 2018.

The changes included in this amendment will be the subject of a short consultation in July and August 2019.

Detailed proposal

Operative date

The measure will have effect from 1 January 2019 (and 12 February 2019 in relation to stamp duty and stamp duty reserve tax).

Current law

The current law is in section 475C Corporation Tax Act 2009.

Proposed revisions

Schedule 20 to Finance Act 2019 introduced new rules on the taxation of hybrid capital instruments with effect from 1 January 2019 (and 12 February 2019 in relation to stamp duty and stamp duty reserve tax). These include section 475C Corporation Tax Act 2009 (“section 475C”), which sets conditions for a debt instrument to qualify as a hybrid capital instrument. The rules in Schedule 20 enable a company to obtain tax deductions for interest paid on qualifying hybrid capital instruments, subject to certain conditions. The rules also ensure that no Stamp Duty or Stamp Duty Reserve Tax is payable on transfers of these instruments. Further details of the rules introduced in Schedule 20 are provided in the ‘Proposed Revisions’ section of the [tax information and impact note](#) which was published on 29 October 2018.

The conditions set by section 475C as originally enacted limit the circumstances in which an instrument can convert into ordinary share capital if it is to come within the rules. In particular, section 475C(5) only permits conversion of the instrument into ordinary share capital of the debtor or of a quoted company which is the ultimate parent of the debtor and which owns at least 75% of the ordinary shares in the debtor.

Under a typical takeover or change of control provision, the acquirer may be any company that, together with its associates, obtains control of the debtor. Section 475C(5) is amended to permit conversion of the instrument into ordinary share capital of the debtor or of a company which obtains control of the debtor following a takeover or change of control. This allows instruments with terms that provide for this possibility to meet the definition of a hybrid capital instrument, subject to meeting the other conditions specified in section 475C.

The amendment will have effect from 1 January 2019 (and 12 February 2019 in relation to stamp duty and stamp duty reserve tax). The amendment will therefore apply for all periods where the new rules on taxation of hybrid capital instruments are in force.

Summary of impacts

Exchequer impact (£m)

2018 to 2019	2019 to 2020	2020 to 2021	2021 to 2022	2022 to 2023	2023 to 2024
nil	nil	nil	nil	nil	nil

This measure is not expected to have an Exchequer impact.

Economic impact

This measure is not expected to have any significant economic impacts.

Impact on individuals, households and families

This measure has no impact on individuals as it only affects banks and insurers. There is no impact on family formation, stability or breakdown.

Equalities impacts

There are no impacts on groups sharing protected characteristics.

Impact on business including civil society organisations

This measure is expected to have a negligible business administration impact on a small number of banks and insurers. Certain regulatory capital instruments they have issued will now qualify for the same tax treatment as they had under rules that were revoked on 31 December 2018. One-off costs for these businesses will include familiarisation with the new rules. There are not expected to be any ongoing costs. This measure is not expected to impact on civil society organisations.

Operational impact (£m) (HMRC or other)

There are no financial consequences for HMRC.

Other impacts

There is no impact on climate and fuel poverty targets or air quality targets. Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be monitored through information collected from elections and through communications with affected taxpayer groups.