



# Income Tax Assessment Amendment Regulations 2009 (No. )<sup>1</sup>

## Select Legislative Instrument 2009 No.

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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 2009

Governor-General

By Her Excellency's Command

**[DRAFT ONLY – NOT FOR SIGNATURE]**

Assistant Treasurer

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**DRAFT ONLY**

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**1 Name of Regulations**

These Regulations are the *Income Tax Assessment Amendment Regulations 2009* (No. ).

**2 Commencement**

These Regulations commence on [*insert future date after registration of the instrument*].

**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 974-135E**

*insert in Subdivision 974-F*

**974-135F Term cumulative subordinated note**

- (1) Subregulation (3) applies in relation to a term cumulative subordinated note, and in respect of the obligation to pay interest on the note on or after 1 July 2001 if all of the following circumstances occur:
- (a) the term of the note is not more than 25 years;
  - (b) there is no power to extend the term of the note beyond a total term of 25 years;
  - (c) the obligation to pay interest on the note is subject to one or more of the following conditions:
    - (i) a condition under which the issuer of the note is able to defer the payment of interest beyond the date on which it would otherwise be due and payable if,

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- immediately before payment, the issuer is insolvent;  
or
- (ii) a condition under which the issuer of the note is able to defer the payment of interest beyond the date on which it would otherwise be due and payable if, immediately after payment, the issuer would be insolvent; or
  - (iii) if the issuer is an approved deposit-taking institution — a condition under which the issuer is required to maintain its capital adequacy ratio under prudential standards issued by the Australian Prudential Regulation Authority (*APRA*); or
  - (iv) if the issuer is a foreign approved deposit-taking institution — a condition under which the issuer is required to maintain its capital adequacy ratio under equivalent prudential standards issued by a foreign regulator comparable to APRA;
- (d) under the terms and conditions of the note, the issuer does not have 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.
- (2) Subregulation (3) does not apply in relation to a term cumulative subordinated note that, at its time of issue:
- (a) constitutes or meets the requirements of a Tier 1 capital instrument; but
  - (b) does not form part of Tier 1 capital of the issuer, or a connected entity, on the basis that the instrument is in excess of the Tier 1 capital required for the purposes of prudential standards that deal with capital adequacy.
- (3) For paragraph 974-135 (8) (a) of the Act, an obligation to pay interest at a particular time on the term cumulative subordinated note is not a contingent obligation only because the payment of the interest may be deferred beyond the date on which it would otherwise become due and payable if the reason for the deferral is that:
- (a) immediately before the payment would be made, the issuer is insolvent; or

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- (b) immediately after the payment would be made, the issuer would be insolvent; or
  - (c) if the issuer is an approved deposit-taking institution — the issuer is required to maintain its capital adequacy ratio under prudential standards issued by APRA; or
  - (d) if the issuer is a foreign approved deposit-taking institution — the issuer is required to maintain its capital adequacy ratio under equivalent prudential standards issued by a foreign regulator comparable to APRA.
- (4) Subregulation (3) applies in relation to a payment of interest to a person that is made under a term cumulative subordinated note before 1 July 2001 only to the extent that:
- (a) the rights of a person (other than the Commonwealth or an authority of the Commonwealth) as at 1 July 2001 would not be affected so as to disadvantage that person; or
  - (b) liabilities would not be imposed on a person (other than the Commonwealth or an authority of the Commonwealth) in respect of anything done or omitted to be done before 1 July 2001.
- (5) In this regulation, the issuer is *insolvent* if:
- (a) the issuer cannot pay its debts to its creditors as they fall due; or
  - (b) the issuer's liabilities exceed its assets.

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#### **Note**

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