Single Rulebook Q&A

Question ID	2013_29
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Own funds
Article	54
Paragraph	3
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
Date of submission	05/07/2013
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Disclose name of institution / entity	No
Type of submitter	Individual
Subject matter	Recognised amount as regulatory capital for an Additional Tier 1 with a write-down mechanism
Question	According to Regulation (EU) No 575/2013 (CRR) Article 54(3): "The amount of Additional Tier 1 instruments recognised in Additional Tier 1 items is limited to the minimum amount Common Equity Tier 1 items that would be generated if the principal amount of the Additional Tier 1 instruments were fully written down or converted into Common Equity Tier 1 instruments". Given the fact that a write-down may be seen as a profit under local accounting GAAP, and hence taxable (NB: true should the issuer be supposed to pay taxes at this time. However, it is unlikely that the issuer records a profit at a time where a write-down is operated), one can think that the recognized amount as Additional Tier 1 at the issue date is the nominal amount less the foreseeable paid tax amount in case of write-down. What's the final view of EBA? Can the entire nominal issue amount be recognized as Additional Tier 1 at the issue date or only a reduced amount (i.e. the nominal amount - the foreseeable paid tax amount in case of write-down)?
Background on the question	Answer to Question 12 of the Near Final Version of the Technical Standards explains that tax effect cannot be addresses through capital requirement regulations and that discussions are still on-going at the EBA level on the

	practical implementation of the provisions of the CRR due to tax effects.
EBA answer	Application of Article 54(3) of Regulation (EU) No. 575/2013 requires that for Additional Tier 1 (AT1) instruments only the minimum amount of Common Equity Tier 1 items is recognised that would be generated at the conversion or write-down of the instruments, after deduction of any foreseeable tax liability or tax payment resulting from the conversion or write-down or any other foreseeable tax liability or tax payment due related to the instruments at the moment of conversion or write-down. Institutions shall assess and justify the amount of any foreseeable tax liabilities or tax payments to the satisfaction of their competent authorities, taking into account in particular the local tax treatment and the structure of the group.
Link	https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2013_29

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