

# FINANCE ACT 2010

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## EXPLANATORY NOTES

### INTRODUCTION

#### ***Section 54: Stamp Duty Reserve Tax: Depository Receipt Systems and Clearance Services Systems***

#### **Summary**

1. **Section 54** is an anti-avoidance provision that withdraws certain existing reliefs where, following an adverse decision in the European Court of Justice, chargeable securities are the subject of arrangements under which the securities are initially routed through an EU clearance service or depository receipt scheme, in order to avoid the higher rate stamp duty reserve tax (SDRT) charge on entry to a non-EU clearance service or depository receipt scheme. It has effect for relevant transfers taking place on or after 1 October 2009.

#### **Details of the Section**

2. Subsections (2)-(4) amend sections 95(1), 97(1) and 97B of the Finance Act (FA) 1986 to make the provisions of those sections subject to new section 97C.
3. Subsection (5) inserts new section 97C into FA 1986.
4. New section 97C(1) provides that the section applies where, under arrangements, chargeable securities are issued to an EU system and are subsequently transferred to a non-EU system.
5. New section 97C(2) provides that the reliefs available under sections 95(1), 97(1) and 97B(1) of FA 1986 will not apply to the subsequent transfer to the non-EU system if the securities have not previously been subject to any 1.5 per cent SDRT charges.
6. New section 97C(3)-(4) describe what is meant by issues and transfers to and from EU and non-EU systems.
7. New section 97C(5) provides definitions of “arrangements”, “EU clearance service operator”, “EU depository receipt issuer”, “exempt transfer” and “nominee”.
8. Subsection (6) provides that the new section 97C has effect in relation to any transfer of chargeable securities on or after 1 October 2009.

#### **Background Note**

9. SDRT is payable upon agreements to transfer chargeable securities at the rate of 0.5 per cent of the consideration for the securities. A higher rate of 1.5 per cent applies where securities are issued or transferred to a clearance service or depository receipt issuer. The 1.5 per cent charge acts as a “season ticket” with subsequent transfers within the 1.5 per cent system being exempt from ordinary 0.5 per cent charges. Where securities that have been subject to a 1.5 per cent entry charge are subsequently transferred to another 1.5 per cent regime, relief is available to ensure that there is no double charge.

*These notes refer to the Finance Act 2010 (c.13)  
which received Royal Assent on 8 April 2010*

10. On October 1 2009, the European Court of Justice (ECJ) held that the higher rate charge on issues of chargeable securities to clearance services in the EU is incompatible with EU law. As a result, it became possible, from that date, for shares intended for non-EU markets to be issued initially to an EU clearance service or depositary receipt issuer, and then transferred to a non-EU clearance service or depositary receipt issuer, under cover of the existing exemptions for transfers between such systems, thereby avoiding all SDRT charges.
11. This section prevents this by removing the exemptions that would otherwise apply to transfers of chargeable securities from an EU 1.5 per cent system to a non-EU 1.5 per cent system where arrangements have been entered into under which 1.5 per cent SDRT would not otherwise be payable. The section has effect from 1 October 2009, the date of the ECJ decision.