



# Finance Act 1986

## 1986 CHAPTER 41

### PART IV

#### STAMP DUTY RESERVE TAX

##### Modifications etc. (not altering text)

- C1** Pt. 4: construed as one with 1999 c. 16, Pt. VI (27.7.1999) by Finance Act 1999 (c. 16), s. 123(1)
- C2** Pt. 4: power to restrict conferred (27.7.1999) by Finance Act 1999 (c. 16), s. 119 (with s. 123(4))
- C3** Pt. 4: power to extend conferred (1.5.1995) by Finance Act 1995 (c. 4), s. 152(2)(b)(6)

#### *Introduction*

#### **86 The tax: introduction**

- (1) A tax, to be known as stamp duty reserve tax, shall be charged in accordance with this Part of this Act.
- (2) The tax shall be under the care and management of the Board.
- (3) Section 1 of the Provisional Collection of Taxes Act 1968 <sup>M1</sup> shall apply to the tax; and accordingly in subsection (1) of that section after the words “petroleum revenue tax” there shall be inserted the words “ stamp duty reserve tax ”.
- [<sup>F1</sup>(4) Stamp duty reserve tax shall be chargeable in accordance with the provisions of this Part of this Act—
  - (a) whether the agreement, transfer, issue or appropriation in question is made or effected in the United Kingdom or elsewhere, and
  - (b) whether or not any party is resident or situate in any part of the United Kingdom.]

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1986, Part IV. (See end of Document for details)*

**Textual Amendments**

**F1** S. 86(4) added (with effect as mentioned in s. 187(2) of the amending Act) by Finance Act 1996 (c. 8), s. 187(1)

**Marginal Citations**

**M1** 1968 c. 2.

*The principal charge*

**87 The principal charge**

- (1) This section applies where a person (A) agrees with another person (B) to transfer chargeable securities (whether or not to B) for consideration in money or money's worth.
- (2) There shall be a charge to stamp duty reserve tax under this section on <sup>F2</sup> . . . the relevant day, <sup>F3</sup> . . .
- (3) In subsection (2) above “the relevant day” means —
  - (a) in a case where the agreement is conditional, the day on which the condition is satisfied, and
  - (b) in any other case, the day on which the agreement is made.
- (4) <sup>F4</sup> . . . . .
- (5) <sup>F5</sup> . . . . .
- (6) Tax under this section shall be charged at the rate of [<sup>F6</sup>0.5 per cent.] or part of £100 of the amount or value of the consideration mentioned in subsection (1) above.
- (7) For the purposes of subsection (6) above the value of any consideration not consisting of money shall be taken to be the price it might reasonably be expected to fetch on a sale in the open market at the time the agreement mentioned in subsection (1) above is made.

[<sup>F7</sup> [<sup>F8</sup>(7A) Where—

- (a) there would be no charge to tax under this section, or
- (b) there would, under section 92 below, be a repayment or cancellation of tax, in relation to some of the chargeable securities to which the agreement between A and B relates if separate agreements had been made between them for the transfer of those securities and for the transfer of the remainder, this section and sections 88(5) and 92 below shall have effect as if such separate agreements had been made.]

(7B) <sup>F9</sup> . . . . .]

(8) <sup>F10</sup> . . . . .

(9) This section applies where the agreement to transfer is made on or after the day on which the rule of The Stock Exchange that prohibits a person from carrying on business as both a broker and a jobber is abolished.

(10) This section has effect subject to sections 88 to 90 below.

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### Textual Amendments

- F2** Words in s. 87(2) repealed (with effect as mentioned in s. 188(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), ss. 188(1), 205, [Sch. 41 Pt. 7](#)
- F3** Words in s. 87(2) repealed (with effect in accordance with s. 188(5) of the amending Act) by [Finance Act 1996 \(c. 8\)](#) s. 188(1), s. 205, {Sch. 41 Pt. 7}
- F4** S. 87(4) repealed (with effect as mentioned in s. 192(6) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), ss. 192(1), 205, [Sch. 41 Pt. 7](#)
- F5** S. 87(5) repealed (with effect as mentioned in s. 192(6) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), ss. 192(1), 205, [Sch. 41 Pt. 7](#)
- F6** Words in s. 87(6) substituted (with effect as mentioned in s. 194(7) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 194\(1\)](#)
- F7** S. 87(7A)(7B) inserted by [Finance Act 1987 \(c. 16\)](#), ss. 110, 132, [Sch. 19 Pt. VII](#)
- F8** S. 87(7A) substituted (with effect in accordance with s. 106 of the amending Act) by [Finance Act 1997 \(c. 16\)](#) s. 106(9), {s. 106(2)}
- F9** S. 87(7B) repealed (with effect as mentioned in s. 106(9) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), ss. 106(3), 113, [Sch. 18 Pt. VII](#)
- F10** S. 87(8) repealed (with effect as mentioned in s. 192(6) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), ss. 192(1), 205, [Sch. 41 Pt. 7](#)

### Modifications etc. (not altering text)

- C4** S. 87 excluded (with application as mentioned in s. 100(6) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [s. 100\(1\)-\(3\)](#)  
S. 87 excluded (28.4.1997) by [S.I. 1997/1156](#), [regs. 4\(2\)\(b\), 8, 10](#)

## 88 [F11]Special cases.]

(1) An instrument on which stamp duty is not chargeable by virtue of —

- [F12][F13(aa) paragraph 24(d) of Schedule 13 to the Finance Act 1999 (renounceable letters of allotment etc.),]
- (a) section 127(1) of the Finance Act 1976 <sup>M2</sup>(transfer to stock exchange nominee), or
- (b) section 84(2) or (3) above, [F14], or
- (c) Part I of Schedule 19 to the Finance Act 1999 (transfers etc. of units in unit trusts),]

shall be disregarded in construing [F15]section 92(1A) and (1B) below].

[F16(1A) An instrument on which stamp duty is not chargeable by virtue of section 186 of the Finance Act 1996 (transfers of securities to members of electronic transfer systems etc) shall be disregarded in construing [F15]section 92(1A) and (1B) below] unless—

- (a) the transfer is made by a stock exchange nominee; and
- (b) the maximum stamp duty chargeable on the instrument, apart from section 186 of the Finance Act 1996, would be [F17]£5;

and in this subsection “stock exchange nominee” means a person designated for the purposes of section 127 of the <sup>M3</sup>Finance Act 1976 as a nominee of The Stock Exchange by an order made by the Secretary of State under subsection (5) of that section.]

[F18(1B) An instrument on which stamp duty is not chargeable by virtue of section 42 of the <sup>M4</sup>Finance Act 1930 or section 11 of the <sup>M5</sup>Finance Act (Northern Ireland) 1954

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(transfer between associated bodies corporate) shall be disregarded in construing [F15]section 92(1A) and (1B) below] in any case where—

- (a) the property mentioned in section 42(2)(a) of the Finance Act 1930 or, as the case may be, section 11(2)(a) of the Finance Act (Northern Ireland) 1954 consists of [F19]or includes] chargeable securities of any particular kind acquired in the period of two years ending with the day on which the instrument was executed; and
- (b) the body corporate from which the conveyance or transfer there mentioned is effected acquired [F20]any of those chargeable securities]—
  - (i) in a transaction which was given effect by an instrument of transfer on which stamp duty was not chargeable by virtue of section [F21]80A] above;
  - (ii) in pursuance of an agreement to transfer securities as regards which section 87 above did not apply by virtue of section [F22]88A] below; [F23]
  - [F24](ia) in pursuance of an agreement to transfer securities which was made for the purpose of performing the obligation to transfer chargeable securities described in section 89AA(1)(a) below and as regards which section 87 above did not apply by virtue of section 89AA(2) below; or]
  - (iii) in circumstances with regard to which the charge to stamp duty or stamp duty reserve tax was treated as not arising by virtue of regulations under section 116 or 117 of the M6Finance Act 1991.]

[F25](1C) Where—

- (a) there is an arrangement falling within subsection (1) of section 80C above (stamp duty relief for transfers in accordance with certain arrangements for B to transfer stock to A or his nominee and for A or his nominee to transfer stock of the same kind and amount back to B or his nominee), and
- (b) under the arrangement stock is transferred to A or his nominee by an instrument on which stamp duty is not chargeable by virtue only of section 80C(2) above, but
- (c) it becomes apparent that stock of the same kind or amount will not be transferred to B or his nominee by A or his nominee in accordance with the arrangement,

[F26]then, if section 80D does not apply,] the instrument shall be disregarded in construing section 92(1A) and (1B) below.

(1D) Where—

- (a) an instrument transferring stock in accordance with an arrangement is stamped under section 80C(5) above, but
- (b) the instrument should not have been so stamped because the arrangement fell within section 80C(4)(a) or (b) above, and
- (c) apart from section 80C above stamp duty would have been chargeable on the instrument,

the instrument shall be deemed to be duly stamped under section 80C(5) above, but shall be disregarded in construing section 92(1A) and (1B) below.]

(2) [F27] .....

(3) [F27] .....

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- [<sup>F28</sup>[<sup>F29</sup>(4) If chargeable securities cannot (apart from this subsection) be identified for the purposes of subsection (1B) above, securities shall be taken as follows, that is to say, securities of the same kind acquired later in the period of two years there mentioned (and not taken for the purposes of that subsection in relation to an earlier instrument) shall be taken before securities acquired earlier in that period.
- (5) If, in the case of an agreement (or of two or more agreements between the same parties) to transfer chargeable securities—
- (a) the conditions in section 92(1A) and (1B) below are not satisfied by virtue only of the application of subsection (1B) above in relation to the instrument (or any one or more of the two or more instruments) in question, but
  - (b) not all of the chargeable securities falling to be regarded for the purposes of that subsection as transferred by the instrument (or by the two or more instruments between them) were acquired as mentioned in paragraphs (a) and (b) of that subsection,
- stamp duty reserve tax shall be repaid or cancelled under section 92 below in accordance with subsection (5A) below.
- (5A) Any repayment or cancellation of tax falling to be made by virtue of subsection (5) above shall be determined as if (without prejudice to section 87(7A) above) there had, instead of the agreement (or the two or more agreements) in question been—
- (a) a separate agreement (or two or more separate agreements) relating to such of the securities as were acquired as mentioned in paragraphs (a) and (b) of subsection (1B) above, and
  - (b) a single separate agreement relating to such of the securities as do not fall within those paragraphs,
- and as if the instrument in question (or the two or more instruments in question between them) had related only to such of the securities as do not fall within those paragraphs.]
- (6) Where a person enters into an agreement for securities to be transferred to him or his nominee, the securities shall be treated for the purposes of subsections (1B)(a) and (4) above as acquired by that person at the time when he enters into the agreement, unless the agreement is conditional, in which case they shall be taken to be acquired by him when the condition is satisfied.]

#### Textual Amendments

- F11** S. 88 sidenote substituted by [Finance Act 1997 \(c. 16\)](#) {s. 106(7)}
- F12** S. 88(1)(aa)(ab) inserted (with effect in accordance with [s. 188\(5\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 188\(2\)](#)
- F13** S. 88(1)(aa) substituted for s. 88(1)(aa)(ab)(with effect in accordance with ss. 112(4)(6), 122 of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 14 para. 20\(2\)](#)
- F14** S. 88(1)(c) and word inserted (with effect in accordance with [ss. 122\(4\)](#) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 19 para. 10](#)
- F15** Words in s. 88(1) substituted (with effect in accordance with [s. 192\(6\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 192\(2\)](#)
- F16** S. 88(1A) inserted (with effect in accordance with [s. 189\(2\)](#) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), [s. 189\(1\)](#)
- F17** Word in s. 88(1A)(b) substituted (with effect in accordance with ss. 112(4)(6), 122 of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [Sch. 14 para. 20\(3\)](#)

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- F18** S. 88(1B) inserted (with effect in accordance with s. 190(3) of the amending Act) by Finance Act 1996 (c. 8), s. 190(1)
- F19** Words in s. 88(1B)(a) inserted (with effect in accordance with s. 106(10) of the amending Act) by Finance Act 1997 (c. 16 {s. 106(5)(a)})
- F20** Words in s. 88(1B)(b) substituted (with effect in accordance with s. 106(10) of the amending Act) by Finance Act 1997 (c. 16 {s. 106(5)(b)})
- F21** Word in s. 88(1B)(b)(i) substituted (with application as mentioned in s. 97(5) of the amending Act) by Finance Act 1997 (c. 16 {s. 97(3)}); S.I. 1997/2428, art. 2(2)
- F22** Word in s. 88(1B)(b)(ii) substituted (with application as mentioned in s. 102(5)(6) of the amending Act) by Finance Act 1997 (c. 16 {s. 102(3)}); S.I. 1997/2428, art. 2(2)
- F23** Word in s. 88(1B)(b)(ii) repealed (with effect in accordance with s. 106(10) of the amending Act) by Finance Act 1997 (c. 16), ss. 106(5)(c), 113, Sch. 18 Pt. 7
- F24** S. 88(1B)(b)(ia) substituted (with application as mentioned in s. 106(6)(8) of the amending Act) by Finance Act 1997 (c. 16 {s. 103(3)}); S.I. 1997/2428, art. 2(2)
- F25** S. 88(1C)(1D) inserted (with effect in accordance with s. 106(7) of the amending Act) by Finance Act 1997 (c. 16 {s. 103(4)})
- F26** Words in s. 88(1C) inserted (with effect in accordance with s. 83(2)(3) of the amending Act) by Finance Act 2009 (c. 10), Sch. 37 para. 3
- F27** S. 88(2)(3) repealed (with effect in accordance with s. 188(5) of the amending Act) by Finance Act 1996 (c. 8), ss. 188(3), 205, Sch. 41 Pt. 7
- F28** S. 88(4)-(6) added (with effect in accordance with s. 190(3) of the amending Act) by Finance Act 1996 (c. 8), s. 190(2)
- F29** S. 88(4)-(5A) substituted for s. 88(4)(5) (with effect in accordance with s. 106(10) of the amending Act) by Finance Act 1997 (c. 16 {s. 106(6)})

#### Modifications etc. (not altering text)

- C5** S. 88(5) modified (6.2.2000) by The Stamp Duty and Stamp Duty Reserve Tax (open-ended Investment Companies) Regulations 1997 (S.I. 1997/1156, reg. 4) (as replaced by S.I. 1999/3261, reg. 5)

#### Marginal Citations

- M2** 1976 c. 40.  
**M3** 1976 c. 40.  
**M4** 1930 c. 28.  
**M5** 1954 c. 23 (N.I.).  
**M6** 1991 c. 31.

### [<sup>F30</sup>88A Section 87: exceptions for intermediaries.

[<sup>F31</sup>(1) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—

- (a) B is a member of a regulated market on which securities of that kind are regularly traded; and
- (b) B is an intermediary and is recognised as such by the market in accordance with arrangements approved by the Commissioners for Her Majesty's Revenue and Customs (“the Commissioners”).

(1A) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—

- (a) B is a member of a multilateral trading facility, or a recognised foreign exchange, on which securities of that kind are regularly traded;

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- (b) B is an intermediary and is recognised as such by the facility or exchange in accordance with arrangements approved by the Commissioners; and
  - (c) the agreement is effected on the facility or exchange.
- (1B) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an intermediary who is approved for the purposes of this section by the Commissioners; and
  - (b) securities of that kind are regularly traded on a regulated market.
- (1C) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an intermediary who is approved for the purposes of this section by the Commissioners;
  - (b) securities of that kind are regularly traded on a multilateral trading facility or a recognised foreign exchange; and
  - (c) the agreement is effected on the facility or exchange.
- (2) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange;
  - (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange;
  - (c) B is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and
  - (d) securities of that kind are regularly traded on a regulated market.
- (2A) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is a member of a regulated market, a multilateral trading facility or a recognised foreign options exchange;
  - (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that market, facility or exchange;
  - (c) B is an options intermediary and is recognised as such by that market, facility or exchange in accordance with arrangements approved by the Commissioners; and
  - (d) the agreement is effected on a relevant qualifying exchange on which securities of that kind are regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that exchange;
- and in paragraph (d) “relevant qualifying exchange” means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.
- (2B) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an options intermediary who is approved for the purposes of this section by the Commissioners;

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- (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and
  - (c) securities of that kind are regularly traded on a regulated market.
- (2C) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or B's nominee if—
- (a) B is an options intermediary who is approved for the purposes of this section by the Commissioners;
  - (b) options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, a regulated market, a multilateral trading facility or a recognised foreign options exchange; and
  - (c) the agreement is effected on a relevant qualifying exchange on which securities of that kind are regularly traded or is effected on a relevant qualifying exchange pursuant to the exercise of a relevant option and options to buy or sell securities of that kind are regularly traded on, and are listed by or quoted on, that exchange;
- and in paragraph (c) “relevant qualifying exchange” means a multilateral trading facility, a recognised foreign options exchange or a recognised foreign exchange.]
- (4) For the purposes of this section—
- (a) an intermediary is a person who carries on a bona fide business of dealing in chargeable securities and does not carry on an excluded business; and
  - (b) an options intermediary is a person who carries on a bona fide business of dealing in quoted or listed options to buy or sell chargeable securities and does not carry on an excluded business.
- (5) The excluded businesses are the following—
- (a) any business which consists wholly or mainly in the making or managing of investments;
  - (b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;
  - (c) any business which consists in insurance business;
  - (d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
  - (e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.
- (6) An agreement is effected on [<sup>F32</sup>a facility or] an exchange for the purposes of [<sup>F33</sup>this section] if (and only if)—
- (a) it is subject to the rules of [<sup>F34</sup>the facility or exchange]; and
  - (b) it is reported to [<sup>F34</sup>the facility or exchange] in accordance with the rules of [<sup>F34</sup>the facility or exchange .]
- [<sup>F35</sup>(6A) The Commissioners may approve a person for the purposes of this section only if the person is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account), whether or not the person is authorised under the Directive.]



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### Textual Amendments

- F30** S. 88A inserted (20.10.1997 with application as mentioned in s. 102(4) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), [s. 102\(1\)\(6\)](#); S.I. 1997/2428, [art. 2](#)
- F31** S. 88A(1)-(2C) substituted for s. 88A(1)-(3) (with effect in accordance with Sch. 21 para. 3(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 3\(2\)](#)
- F32** Words in s. 88A(6) inserted (with effect in accordance with Sch. 21 para. 3(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 3\(3\)\(a\)](#)
- F33** Words in s. 88A(6) substituted (with effect in accordance with Sch. 21 para. 3(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 3\(3\)\(b\)](#)
- F34** Words in s. 88A(6) substituted (with effect in accordance with Sch. 21 para. 3(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 3\(3\)\(c\)](#)
- F35** S. 88A(6A) inserted (with effect in accordance with Sch. 21 para. 3(5) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 3\(4\)](#)

### Modifications etc. (not altering text)

- C6** S. 88A extended (12.10.2004) by [The Stamp Duty and Stamp Duty Reserve Tax \(Extension of Exceptions relating to Recognised Exchanges\) Regulations 2004 \(S.I. 2004/2421\)](#), [art. 1](#), [reg. 2](#)
- C7** S. 88A: power to extend conferred (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 50\(1\)-\(4\)](#)
- C8** S. 88A extended (with modifications) (11.8.2005) by [The Stamp Duty and Stamp Duty Reserve Tax \(Extension of Exceptions relating to Recognised Exchanges\) Regulations 2005 \(S.I. 2005/1990\)](#), [regs. 1, 2-7](#)
- C9** S. 88A extended (16.2.2006) by [The Stamp Duty and Stamp Duty Reserve Tax \(Extension of Exceptions relating to Recognised Exchanges\) Regulations 2006 \(S.I. 2006/139\)](#), [regs. 1, 2\(1\)](#)
- C10** S. 88A: power to extend (with modifications) conferred (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [s. 117](#)
- C11** S. 88A extended (26.7.2002) by [S.I. 2002/1975](#), [art. 2](#)

### [<sup>F36</sup>88B Intermediaries: supplementary.

(1) For the purposes of section 88A above the question whether a person is connected with another shall be determined in accordance with the provisions of [<sup>F37</sup>section 1122 of the Corporation Tax Act 2010].

<sup>F38</sup>(2) In section 88A above and this section—

“collective investment scheme” has the meaning given in section [<sup>F39</sup>235 of the Financial Services and Markets Act 2000];

[<sup>F40</sup>“the Directive” means Directive [2004/39/EC](#) of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, as amended from time to time;]

<sup>F41</sup>...

“EEA State” [<sup>F42</sup>, in relation to any time, means a State which at that time is a member State or any other State which at that time] is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992 as adjusted by the Protocol signed at Brussels on the 17th March 1993 [<sup>F43</sup>(as modified or supplemented from time to time)];

[<sup>F44</sup>“insurance business” means business which consists of the effecting or carrying out of contracts of insurance and, for the purposes of this definition, “contract of insurance” has the meaning given by Article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001;]

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“quoted or listed options” means options which are quoted on or listed by an EEA exchange or a recognised foreign options exchange;

“recognised foreign exchange” and “recognised foreign options exchange” have the meanings given, respectively, by subsections (3) and (4) of section 80B above;

[<sup>F45</sup>“trustee”, in relation to a collective investment scheme, means a trustee or a depositary within the meaning given in section 237(2) of the Financial Services and Markets Act 2000.]

[ Each of the following expressions—  
<sup>F46</sup>(2A) “multilateral trading facility”, and  
“regulated market”,  
has the same meaning in section 88A above as it has for the purposes of the Directive.]

- (3) In section 88A above “the exercise of a relevant option” means—  
(a) the exercise by B of an option to buy securities; or  
(b) the exercise of an option binding B to buy securities.

[ The Treasury may by regulations amend section 88A above and this section (as they  
<sup>F47</sup>(3A) have effect for the time being) in order to extend the exemption from tax under that section.]

- (4) The Treasury may by regulations provide that section 88A above shall not have effect in relation to kinds of agreement specified in the regulations.
- (5) The Treasury may by regulations provide that if—  
(a) an agreement falls within [<sup>F48</sup>any of subsections (1) to (2C)] of section 88A above, and  
(b) section 87 above would, apart from section 88A, apply to the agreement,  
section 87 shall apply to the agreement but with the substitution of a rate of tax not exceeding 0.1 per cent. for the rate specified in subsection (6) of that section.
- (6) The Treasury may by regulations change the meaning of “intermediary” or “options intermediary” for the purposes of section 88A above by amending subsection (4) or (5) of that section (as it has effect for the time being).
- (7) The power to make regulations under subsections [<sup>F49</sup>(3A)] to (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.]

#### Textual Amendments

- F36** Ss. 88A, 88B inserted (20.10.1997 with application as mentioned in s. 102(4) of the amending Act) by Finance Act 1997 (c. 16), s. 102(1)(6); S.I. 1997/2428, art. 2
- F37** Words in s. 88B(1) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 199 (with Sch. 2)
- F38** Words in s. 88B(2) substituted (1.4.2007 for specified purposes, 1.11.2007 in so far as not already in force) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 (S.I. 2007/126), reg. 1(2), Sch. 6 para. 8(3)
- F39** Words in s. 88B(2) substituted (with effect as mentioned in art. 9(5) of the amending S.I.) by S.I. 2001/3629, arts. 1(2)(a), 9(2)
- F40** Words in s. 88B(2) inserted (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by Finance Act 2007 (c. 11), Sch. 21 para. 4(2)(a)

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- F41** Words in s. 88B(2) repealed (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 4\(2\)\(b\)](#), [Sch. 27 Pt. 4\(2\)](#)
- F42** Words in s. 88B(2) substituted (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 4\(2\)\(c\)](#)
- F43** Words in s. 88B(2) inserted (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 4\(2\)\(c\)](#)
- F44** Words in s. 88B(2) substituted (with effect as mentioned in art. 9(5) of the amending S.I.) by [S.I. 2001/3629](#), arts. 1(2)(a), [9\(3\)](#)
- F45** Words in s. 88B(2) substituted (with effect as mentioned in art. 9(5) of the amending S.I.) by [S.I. 2001/3629](#), arts. 1(2)(a), [9\(4\)](#)
- F46** S. 88B(2A) inserted (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 4\(3\)](#)
- F47** S. 88B(3A) inserted (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 4\(4\)](#)
- F48** Words in s. 88B(5) substituted (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 4\(5\)](#)
- F49** Word in s. 88B(7) substituted (with effect in accordance with Sch. 21 para. 4(7) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 4\(6\)](#)

## **89 Section 87: exceptions for market makers etc.**

**F50** .....

### **Textual Amendments**

- F50** S. 89 repealed (with effect as mentioned in s. 102(4) of the amending Act) by [Finance Act 1997 \(c. 16\)](#), ss. 102(2), 113, [Sch. 18 Pt. VII](#)

## **[<sup>F51</sup>89A Section 87: exceptions for public issues.**

- (1) Section 87 above shall not apply as regards an agreement to transfer securities other than units under a unit trust scheme to B or B's nominee if —
  - (a) the agreement is part of an arrangement, entered into by B in the ordinary course of B's business as an issuing house, under which B (as principal) is to offer the securities for sale to the public,
  - (b) the agreement is conditional upon the admission of the securities to the Official List of The Stock Exchange,
  - (c) the consideration under the agreement for each security is the same as the price at which B is to offer the security for sale, and
  - (d) B sells the securities in accordance with the arrangement referred to in paragraph (a) above.
- (2) Section 87 above shall not apply as regards an agreement if the securities to which the agreement relates are newly subscribed securities other than units under a unit trust scheme and —
  - (a) the agreement is made in pursuance of an offer to the public made by A (as principal) under an arrangement entered into in the ordinary course of A's business as an issuing house,
  - (b) a right of allotment in respect of, or to subscribe for, the securities has been acquired by A under an agreement which is part of the arrangement,

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- (c) both those agreements are conditional upon the admission of the securities to the Official List of The Stock Exchange, and
  - (d) the consideration for each security is the same under both agreements;
- and for the purposes of this subsection, “newly subscribed securities” are securities which, in pursuance of the arrangement referred to in paragraph (a) above, are issued wholly for new consideration.
- (3) Section 87 above shall not apply as regards an agreement if the securities to which the agreement relates are registered securities other than units under a unit trusty scheme and —
- (a) the agreement is made in pursuance of an offer to the public made by A,
  - (b) the agreement is conditional upon the admission of the securities to the Official List of The Stock Exchange, and
  - (c) under the agreement A issues to B or his nominee a renounceable letter of acceptance, or similar instrument, in respect of the securities.
- (4) The Treasury may by regulations amend paragraph (b) of subsection (1) above, paragraph (c) of subsection (2) above, and paragraph (b) of subsection (3) above (as they have effect for the time being); and the power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.]

#### Textual Amendments

**F51** S. 89A inserted by Finance (No. 2) Act 1987 (c. 51), s. 100(1)

#### [<sup>F52</sup>89A Section 87: exception for repurchases and stock lending.

- (1) This section applies where a person (P) has entered into an arrangement with another person (Q) under which—
  - (a) Q is to transfer chargeable securities of a particular kind to P or his nominee, and
  - (b) chargeable securities of the same kind and amount are to be transferred by P or his nominee to Q or his nominee,
 and the conditions set out in subsection [<sup>F53</sup>(2A) or] (3) below are fulfilled.
- (2) Section 87 above shall not apply as regards an agreement to transfer chargeable securities to P or his nominee or Q or his nominee in accordance with the arrangement.

[ The conditions in this subsection are—

- <sup>F54</sup>(2A) (a) that P or Q is authorised under the law of an EEA State to provide any of the investment services or activities listed in Section A 2 or 3 of Annex I to the Directive (execution of orders on behalf of clients and dealing on own account) in relation to securities of the kind concerned, whether or not P or Q is authorised under the Directive; <sup>F55</sup>...
- (b) that securities of the kind concerned are regularly traded on a regulated market[<sup>F56</sup>; and
- (c) that chargeable securities are transferred to P or his nominee and Q or his nominee in pursuance of the arrangement.]

- (3) The conditions [<sup>F57</sup>in this subsection] are—

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- (a) that the agreement is effected on [<sup>F58</sup>a regulated market, a multilateral trading facility] or a recognised foreign exchange;
  - (b) that securities of the kind concerned are regularly traded on that [<sup>F59</sup>market, facility or] exchange; and
  - (c) that chargeable securities are transferred to P or his nominee and Q or his nominee in pursuance of the arrangement.
- (4) An arrangement does not fall within subsection (1) above if—
- (a) the arrangement is not such as would be entered into by persons dealing with each other at arm's length; or
  - (b) under the arrangement any of the benefits or risks arising from fluctuations, before the transfer to Q or his nominee takes place, in the market value of the chargeable securities accrues to, or falls on, P.
- (5) An agreement is effected on [<sup>F60</sup>a market, a facility or] an exchange for the purposes of subsection (3) above if (and only if)—
- (a) it is subject to the rules of [<sup>F61</sup>the market, facility or exchange]; and
  - (b) it is reported to [<sup>F61</sup>the market, facility or exchange] in accordance with the rules of [<sup>F61</sup>the market, facility or exchange].
- (6) In this section—
- [<sup>F62</sup>“the Directive” has the meaning given in section 88B(2) above;]
  - [<sup>F62</sup>“EEA State” has the meaning given in section 88B(2) above;]
  - <sup>F63</sup> ...
- “recognised foreign exchange” has the meaning given in section 80B(3) above.
- [ Each of the following expressions—
- <sup>F64</sup>(6A) “multilateral trading facility”, and  
“regulated market”,
- has the same meaning in this section as it has for the purposes of the Directive.]
- (7) The Treasury may by regulations provide that if section 87 would apply as regards an agreement but for subsection (2) above, section 87 shall apply as regards the agreement but with the substitution of a rate of tax not exceeding 0.1 per cent. for the rate specified in subsection (6) of that section.
- (8) The Treasury may by regulations amend this section (as it has effect for the time being) in order—
- (a) to change the conditions for exemption from tax under this section; or
  - (b) to provide that this section does not apply in relation to kinds of arrangement specified in the regulations.
- (9) The power to make regulations under subsection (7) or (8) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.]

#### Textual Amendments

**F52** S. 89AA inserted (20.10.1997 with application as mentioned in s. 103(5) of the amending Act) by Finance Act 1997 (c. 16), s. 103(1)(8); S.I. 1997/2428, art. 2

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- F53** Words in s. 89AA(1) inserted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(2\)](#)
- F54** S. 89AA(2A) inserted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(3\)](#)
- F55** Word in s. 89AA(2A)(a) omitted (with effect in accordance with reg. 1(2) of the amending S.I.) by virtue of [The Stamp Duty Reserve Tax \(Amendment of section 89AA of the Finance Act 1986\) Regulations 2008 \(S.I. 2008/3236\)](#), regs. 1(1), [2\(a\)](#)
- F56** S. 89AA(2A)(c) and word inserted (with effect in accordance with reg. 1(2) of the amending S.I.) by [The Stamp Duty Reserve Tax \(Amendment of section 89AA of the Finance Act 1986\) Regulations 2008 \(S.I. 2008/3236\)](#), regs. 1(1), [2\(b\)](#)
- F57** Words in s. 89AA(3) inserted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(4\)\(a\)](#)
- F58** Words in s. 89AA(3) substituted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(4\)\(b\)](#)
- F59** Words in s. 89AA(3) inserted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(4\)\(c\)](#)
- F60** Words in s. 89AA(5) inserted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(5\)\(a\)](#)
- F61** Words in s. 89AA(5) substituted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(5\)\(b\)](#)
- F62** Words in s. 89AA(6) inserted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(6\)\(a\)](#)
- F63** Words in s. 89AA(6) repealed (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(6\)\(b\)](#), [Sch. 27 Pt. 4\(2\)](#)
- F64** S. 89AA(6A) inserted (with effect in accordance with Sch. 21 para. 6(8) of the amending Act) by [Finance Act 2007 \(c. 11\)](#), [Sch. 21 para. 6\(7\)](#)

#### **Modifications etc. (not altering text)**

- C12** S. 89AA extended (12.10.2004) by [The Stamp Duty and Stamp Duty Reserve Tax \(Extension of Exceptions relating to Recognised Exchanges\) Regulations 2004 \(S.I. 2004/2421\)](#), art. 1, [reg. 2](#)
- C13** S. 89AA: power to extend conferred (20.7.2005) by [Finance \(No. 2\) Act 2005 \(c. 22\)](#), [s. 50\(1\)-\(4\)](#)
- C14** S. 89AA extended (with modifications) (11.8.2005) by [The Stamp Duty and Stamp Duty Reserve Tax \(Extension of Exceptions relating to Recognised Exchanges\) Regulations 2005 \(S.I. 2005/1990\)](#), regs. 1, [2-7](#)
- C15** S. 89AA extended (16.2.2006) by [The Stamp Duty and Stamp Duty Reserve Tax \(Extension of Exceptions relating to Recognised Exchanges\) Regulations 2006 \(S.I. 2006/139\)](#), regs. 1, [2\(1\)](#)
- C16** S. 89AA: power to extend conferred (24.7.2002) by [Finance Act 2002 \(c. 23\)](#), [s. 117](#)
- C17** S. 89AA extended (26.7.2002) by [S.I. 2002/1975](#), [art. 2](#)
- C18** S. 89AA modified (1.1.1999) by [S.I. 1998/3177](#), [arts. 26\(2\), 28\(2\), 30\(2\)](#)

### **[<sup>F65</sup>89A]Section 87: exception for repurchases and stock lending in case of insolvency**

- (1) This section applies where—
- (a) P and Q have entered into an arrangement falling within section 89AA(1),
  - (b) the only reason that the conditions in subsection (2A) or (3) of that section are not met is that chargeable securities of the same kind and amount as those transferred to P or P's nominee are not transferred to Q or Q's nominee, and
  - (c) the conditions in subsection (2) below are met.
- (2) The conditions in this subsection are that—
- (a) P and Q are not connected persons within the meaning of [<sup>F66</sup>section 1122 of the Corporation Tax Act 2010],

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- (b) after Q has transferred securities under the arrangement, either P or Q becomes insolvent,
  - (c) it becomes apparent (whether before or after the insolvency occurs) that, as a result of the insolvency, securities will not be transferred to Q or Q's nominee in accordance with the arrangement.
- (3) Section 87 does not apply as regards an agreement to transfer chargeable securities to P or P's nominee, or Q or Q's nominee, in accordance with the arrangement.
- (4) Subsections (5) and (6) apply if—
  - (a) the party who does not become insolvent (“the solvent party”) or the solvent party's nominee acquires replacement securities, and
  - (b) the replacement securities are acquired before the end of the period of 30 days beginning with the day on which the insolvency occurs (“the insolvency date”).
- (5) Where collateral is provided under the arrangement (or under arrangements of which that arrangement forms part), section 87 does not apply as regards any agreement to transfer to the solvent party or the solvent party's nominee—
  - (a) replacement securities acquired using the collateral (whether directly or indirectly), or
  - (b) where the solvent party uses the whole of the value of the collateral to acquire replacement securities, any further replacement securities.
- (6) Where no collateral is provided as mentioned in subsection (5), section 87 does not apply as regards any agreement to transfer replacement securities to the solvent party or the solvent party's nominee.
- (7) Subsections (5) and (6) may apply as regards more than one agreement (and where those subsections apply as regards more than one agreement, the agreements may be with different persons).
- (8) But those subsections apply only as regards replacement securities up to the amount of securities which will not be transferred as a result of the insolvency.
- (9) For the purposes of this section a person becomes insolvent—
  - (a) if a company voluntary arrangement takes effect under Part 1 of the Insolvency Act 1986,
  - (b) if an administration application (within the meaning of Schedule B1 to that Act) is made or a receiver or manager, or an administrative receiver, is appointed,
  - (c) on the commencement of a creditor's voluntary winding up (within the meaning of Part 4 of that Act) or a winding up by the court under Chapter 6 of that Part,
  - (d) if an individual voluntary arrangement takes effect under Part 8 of that Act,
  - (e) on the presentation of a bankruptcy petition (within the meaning of Part 9 of that Act),
  - (f) if a compromise or arrangement takes effect under Part 26 of the Companies Act 2006,
  - (g) if a bank insolvency order takes effect under Part 2 of the Banking Act 2009,
  - (h) if a bank administration order takes effect under Part 3 of that Act,<sup>F67</sup> ...
  - <sup>F68</sup> [ if a special administration order takes effect under the Investment Bank Special Administration Regulations 2011.]



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- (i) on the occurrence of any corresponding event which has effect under or as a result of the law of Scotland or Northern Ireland or a country or territory outside the United Kingdom.

(10) In this section—

“collateral” means an amount of money or other property which is payable to, or made available for the benefit of, a party to an arrangement or that party's nominee for the purpose of securing the discharge of the requirement to transfer securities to that party or the nominee;

“replacement securities”, in the event of a party to an arrangement becoming insolvent, are chargeable securities of the same kind as the securities which will not be transferred to the other party or that party's nominee as a result of the insolvency.]

#### Textual Amendments

- F65** S. 89AB inserted (with effect in accordance with s. 83(2)(3) of the amending Act) by [Finance Act 2009 \(c. 10\)](#), [Sch. 37 para. 5](#)
- F66** Words in s. 89AB(2)(a) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 200](#) (with [Sch. 2](#))
- F67** Word in s. 89AB(9)(h) omitted (8.2.2011) by virtue of [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), reg. 1, [Sch. 6 para. 9\(3\)](#) (with reg. 27(a))
- F68** S. 89AB(9)(ha) inserted (8.2.2011) by [The Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), reg. 1, [Sch. 6 para. 9\(3\)](#) (with reg. 27(a))

#### [<sup>F69</sup>89B Section 87: exceptions for stock lending and collateral security arrangements.

- (1) Where a person (P) has contracted to sell chargeable securities of a particular kind in the ordinary course of his business as a market maker in chargeable securities of that kind and, to enable him to fulfil the contract, he enters into an arrangement under which—
- another person (Q) is to transfer chargeable securities to P or his nominee, and
  - in return, chargeable securities of the same kind and amount are to be transferred (whether or not by P or his nominee) to Q or his nominee,
- section 87 above shall not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (2) Where the arrangement mentioned in subsection (1) above is also one under which—
- an amount of chargeable securities of some other kind is to be transferred by P or his nominee to Q or his nominee by way of security for the performance of the obligation described in paragraph (b) of that subsection, and
  - on performance of that obligation, the securities mentioned in paragraph (a) above, or chargeable securities of the same kind and amount as those securities, are to be transferred to P or his nominee,
- section 87 above shall also not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (3) Where, to enable Q to make the transfer to P or his nominee which is mentioned in paragraph (a) of subsection (1) above, Q enters into an arrangement under which—



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- (a) another person (R) is to transfer chargeable securities to Q or his nominee, and
- (b) in return, chargeable securities of the same kind and amount are to be transferred (whether or not by Q or his nominee) to R or his nominee,
- section 87 above shall not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (4) Where the arrangement mentioned in subsection (3) above is also one under which—
- (a) an amount of chargeable securities of some other kind is to be transferred by Q or his nominee to R or his nominee by way of security for the performance of the obligation described in paragraph (b) of that subsection, and
- (b) on performance of that obligation, the securities mentioned in paragraph (a) above, or chargeable securities of the same kind and amount as those securities, are to be transferred to Q or his nominee,
- section 87 above shall also not apply as regards an agreement to transfer chargeable securities which is made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) or (b) above.
- (5) For the purposes of this section a person is a market maker in chargeable securities of a particular kind if he—
- (a) holds himself out at all normal times in compliance with the rules of The Stock Exchange as willing to buy and sell chargeable securities of that kind at a price specified by him, and
- (b) is recognised as doing so by The Stock Exchange.
- (6) The Treasury may by regulations provide that for subsection (5) above (as it has effect for the time being) there shall be substituted a subsection containing a different definition of a market maker for the purposes of this section.
- (7) Regulations under subsection (6) above shall apply in relation to any agreement to transfer chargeable securities in pursuance of an arrangement entered into on or after such day after 1st July 1996 as is specified in the regulations.
- (8) The power to make regulations under subsection (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.]

#### Textual Amendments

- F69** S. 89B inserted (with effect as mentioned in s. 191(2) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 191\(1\)](#)

## 90 Section 87: other exceptions

- (1) Section 87 above shall not apply as regards an agreement to transfer a unit under a unit trust scheme [<sup>F70</sup>to or from the managers] under the scheme.

[<sup>F71</sup>(1A) Section 87 above shall not apply as regards an agreement to transfer a unit under a unit trust scheme if an instrument executed at the same time as the agreement and giving effect to the agreement would be exempt from stamp duty (if stamp duty were otherwise chargeable) by virtue of—

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- (a) section 42 of the Finance Act 1930 or section 11 of the Finance Act (Northern Ireland) 1954 (transfers between associated companies), or
- (b) regulations under section 87(2) of the Finance Act 1985 (power to exempt instruments from stamp duty of fixed amount)]<sup>F72</sup>, or
- (c) section 96 of the Finance Act 1997 (demutualisation of insurance companies).]

<sup>F73</sup>(1B) Section 87 above shall not apply as regards an agreement to transfer trust property to the unit holder on the surrender to the managers of a unit under a unit trust scheme.

The reference here to the surrender of a unit has the same meaning as in Part II of Schedule 19 to the Finance Act 1999.]

(2) <sup>F74</sup> .....

(3) Section 87 above shall not apply as regards an agreement to transfer securities constituted by or transferable by means of —

<sup>F75</sup>(a) a non-UK bearer instrument;]

(b) <sup>F76</sup> .....

<sup>F77</sup>(3A) Section 87 above shall not apply as regards an agreement to transfer chargeable securities constituted by or transferable by means of <sup>F78</sup>[a UK bearer instrument] unless subsection (3B), (3C) or (3E) below applies to the instrument.

(3B) This subsection applies to any instrument which falls within <sup>F79</sup>[the exemption conferred by paragraph 16 of Schedule 15 to the Finance Act 1999 (renounceable letters of allotment etc.)].

(3C) This subsection applies to an instrument if—

(a) the instrument was issued by a body corporate incorporated in the United Kingdom <sup>F80</sup>(other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea));

<sup>F81</sup>(b) stamp duty under Schedule 15 to the Finance Act 1999 was not chargeable on the issue of the instrument by virtue only of the exemption conferred by paragraph 17 of that Schedule (non-sterling bearer instruments); and]

(c) the instrument is not exempt.

(3D) An instrument is exempt for the purposes of subsection (3C) above if—

(a) the chargeable securities in question are, or a depositary receipt for them is, listed on a recognised stock exchange; and

(b) the agreement to transfer those securities is not made in contemplation of, or as part of an arrangement for, a takeover of the body corporate which issued the instrument.

(3E) This subsection applies to an instrument if—

(a) the instrument was issued by a body corporate incorporated in the United Kingdom <sup>F82</sup>(other than an SE which has its registered office outside the United Kingdom following a transfer in accordance with Article 8 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea));

<sup>F83</sup>(b) stamp duty under Schedule 15 to the Finance Act 1999 was not chargeable on the issue of the instrument—

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- (i) by virtue only of the exemption conferred by section 79(2) above (bearer instruments relating to loan capital), or
  - (ii) by virtue only of that provision and paragraph 17 of that Schedule (non-sterling bearer instruments);]
  - (c) by virtue of section 79(5) (convertible loan capital) or 79(6) (loan capital carrying special rights) above, stamp duty would be chargeable on an instrument transferring the loan capital to which the instrument relates; and
  - (d) the instrument is not exempt.
- (3F) An instrument is exempt for the purposes of subsection (3E) above if—
- (a) the chargeable securities in question are, or a depositary receipt for them is, listed on a recognised stock exchange;
  - (b) the agreement to transfer those securities is not made in contemplation of, or as part of an arrangement for, a takeover of the body corporate which issued the instrument; and
  - (c) those securities do not carry any right of the kind described in section 79(5) above (right of conversion into, or acquisition of, shares or other securities) by the exercise of which [<sup>F84</sup>chargeable securities which are not listed] on a recognised stock exchange may be obtained.]
- (4) Section 87 above shall not apply as regards an agreement which forms part of an arrangement falling within section 93(1) or 96(1) below.
- [<sup>F85</sup>(5) Section 87 above shall not apply as regards an agreement to transfer securities which the Board are satisfied are held, when the agreement is made, by a person within subsection (6) below.
- (6) A person is within this subsection if his business is exclusively that of holding shares, stock or other marketable securities —
- (a) as nominee or agent for a person whose business is or includes the provision of clearance services for the purchase and sale of shares, stock or other marketable securities, and
  - (b) for the purpose of such part of the business mentioned in paragraph (a) above as consists of the provision of such clearance services (in a case where the business does not consist exclusively of that); and in this subsection, 'marketable securities' shall be construed in accordance with section 122(1) of the Stamp Act 1891 <sup>M7</sup>.]
- [<sup>F86</sup>(7) Section 87 above shall not apply as regards an agreement to transfer securities to —
- (a) [<sup>F87</sup>a charitable company], or
  - (b) the trustees of [<sup>F88</sup>a charitable trust], or
  - (c) the Trustees of the National Heritage Memorial Fund, or
  - (d) the Historic Buildings and Monuments Commission for England.]<sup>F89</sup> ...
  - <sup>F89</sup>(e) .....
- [<sup>F90</sup>(7A) Section 87 above does not apply as regards an agreement to transfer any shares in a company which are held by the company (whether in accordance with section [<sup>F91</sup>724] of the Companies Act [<sup>F91</sup>2006] (treasury shares) or otherwise).]
- [<sup>F92</sup>(7B) Section 87 above does not apply as regards—
- (a) an agreement to transfer chargeable securities—

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- (i) to a depositary under an authorised contractual scheme, to be held as part of the property subject to the scheme, in exchange for the issue of units in the scheme (and for no other consideration);
  - (ii) between depositaries under the same authorised contractual scheme;
  - (b) an agreement to transfer units in an authorised contractual scheme.
- (7C) In subsection 7(B), “authorised contractual scheme” has the meaning given in section 237(3) of the Financial Services and Markets Act 2000 and “depositary” and “units” have the meaning given in section 237(2) of that Act.
- (7D) Subsection (7B) shall not apply where the agreement forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of stamp duty or stamp duty reserve tax.]
- [<sup>F93</sup>(8) For the purposes of subsections (3D) and (3F) above—
- (a) references to a depositary receipt for chargeable securities shall be construed in accordance with section 94(1) below;
  - [<sup>F94</sup>(b) references to anything listed on a recognised stock exchange shall be construed in accordance with section 1005 of the Income Tax Act 2007;]
  - (c) there is a takeover of a body corporate if a person, on his own or together with connected persons, loses or acquires control of it.
- (9) For the purposes of subsection (8) above—
- (a) any question whether a person is connected with another shall be determined in accordance with section 286 of the <sup>M8</sup>Taxation of Chargeable Gains Act 1992;
  - (b) “control” shall be construed in accordance with [<sup>F95</sup>sections 450 and 451 of the Corporation Tax Act 2010 ].]

### Textual Amendments

- F70** Words in s. 90(1) substituted (6.2.2000) by Finance Act 1999 (c. 16), s. 122(4), **Sch. 19 para. 11(2)**
- F71** S. 90(1A) inserted (6.2.2000) by Finance Act 1999 (c. 16), s. 122(4), **Sch. 19 para. 11(3)**
- F72** S. 90(1A)(c) and word inserted (with application in accordance with s. 97(5) of the amending Act) by Finance Act 2005 (c. 7), **s. 97(2)**
- F73** S. 90(1B) inserted (6.2.2000) by Finance Act 1999 (c. 16), s. 122(4), **Sch. 19 para. 11(4)**
- F74** S. 90(2) repealed (with effect as mentioned in Sch. 20 Pt. V(5) Note 1 of the amending Act) by Finance Act 1999 (c. 16), s. 139, **Sch. 20 Pt. V(5)**
- F75** S. 90(3)(a) substituted (with application as mentioned in s. 113(4) of the amending Act) by Finance Act 1999 (c. 16), s. 113(3), **Sch. 16 para. 6(2)**
- F76** S. 90(3)(b) repealed (with application as mentioned in s. 105(4) of the amending Act) by Finance Act 1997 (c. 16), ss. 105(1), 113, **Sch. 18 Pt. VII**
- F77** S. 90(3A)-(3F) inserted (with application as mentioned in s. 105(4) of the amending Act) by Finance Act 1997 (c. 16), **s. 105(2)**
- F78** Words in s. 90(3A) substituted (with application as mentioned in s. 113(4) of the amending Act) by Finance Act 1999 (c. 16), s. 113(3), **Sch. 16 para. 6(3)**
- F79** Words in s. 90(3B) substituted (with application as mentioned in s. 113(4) of the amending Act) by Finance Act 1999 (c. 16), s. 113(3), **Sch. 16 para. 6(4)**
- F80** Words in s. 90(3C)(a) inserted (with effect in accordance with s. 58(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 58(1)**
- F81** S. 90(3C)(b) substituted (with application as mentioned in s. 113(4) of the amending Act) by Finance Act 1999 (c. 16), s. 113(3), **Sch. 16 para. 6(5)**

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- F82** Words in s. 90(3E)(a) inserted (with effect in accordance with s. 58(4) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), **s. 58(2)**
- F83** S. 90(3E)(b) substituted (with application as mentioned in s. 113(4) of the amending Act) by Finance Act 1999 (c. 16), s. 113(3), **Sch. 16 para. 6(6)**
- F84** Words in s. 90(3F)(c) substituted (with application as mentioned in s. 120(4) of the amending Act) by Finance Act 1999 (c. 16), **ss. 120(2)** (with s. 123(4))
- F85** S. 90(5)(6) substituted for s. 90(5) (retrospectively) by Finance Act 1987 (c. 16), s. 56, **Sch. 7 para. 5**
- F86** S. 90(5)(6) added (retrospectively) by Finance Act 1987 (c. 16), s. 56, **Sch. 7 para. 6**
- F87** Words in s. 90(7)(a) substituted (with effect in accordance with art. 6 of the commencing S.I.) by Finance Act 2010 (c. 13), **Sch. 6 paras. 11(a)**, 34(2); S.I. 2012/736, art. 6
- F88** Words in s. 90(7)(b) substituted (with effect in accordance with art. 6 of the commencing S.I.) by Finance Act 2010 (c. 13), **Sch. 6 paras. 11(b)**, 34(2); S.I. 2012/736, art. 6
- F89** S. 90(7)(e) and word omitted (1.4.2012) by virtue of The Public Bodies (Abolition of the National Endowment for Science, Technology and the Arts) Order 2012 (S.I. 2012/964), arts. 1(2), 3(1), **Sch.**
- F90** S. 90(7A) inserted (with effect in accordance with s. 195(12) of the amending Act and with effect 1.12.2003) by Finance Act 2003 (c. 14), **Sch. 40 para. 3**; S.I. 2003/3077, art. 2
- F91** Word in s. 90(7A) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments) (Taxes and National Insurance) Order 2009 (S.I. 2009/1890), arts. 1(1), **7(d)**
- F92** S. 90(7B)-(7D) inserted (28.6.2013) by The Stamp Duty and Stamp Duty Reserve Tax (Collective Investment Schemes) (Exemptions) Regulations 2013 (S.I. 2013/1401), regs. 1, **3**
- F93** S. 90(8)(9) added (with application as mentioned in s. 105(4) of the amending Act) by Finance Act 1997 (c. 16), **s. 105(3)**
- F94** S. 90(8)(b) substituted (19.7.2007) by Finance Act 2007 (c. 11), **Sch. 26 para. 6**
- F95** Words in s. 90(9)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), **Sch. 1 para. 201** (with Sch. 2)

#### Modifications etc. (not altering text)

- C19** S. 90 modified by S.I. 1997/1156, **reg. 4** (as substituted (6.2.2000) by S.I. 1999/3261, **reg. 5**)

#### Marginal Citations

- M7** 1891 c. 39.  
**M8** 1992 c. 12.

## 91 Liability to tax

- (1) Where tax is charged under section 87 above as regards an agreement, B shall be liable for the tax.
- (2) <sup>F96</sup> .....

#### Textual Amendments

- F96** S. 91(2) repealed (retrospectively) by Finance Act 1987 (c. 51), **ss. 100(2)**, 104(4), **Sch. 9 Pt. IV**

## 92 Repayment or cancellation of tax

- (1) If, as regards an agreement to transfer securities to B or his nominee, tax is charged under section 87 above and it is proved to the Board's satisfaction that at a time [<sup>F97</sup> on or after the relevant day (as defined in section 87(3))] but before the expiry of the period of six years [<sup>F98</sup> (beginning with that day)] the conditions mentioned in [<sup>F99</sup> subsections

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(1A) and (1B) below] have been fulfilled, [<sup>F100</sup>subsections (2) to (4A) of this section shall apply].

[<sup>F101</sup>(1A) The first condition is that an instrument is (or instruments are) executed in pursuance of the agreement and the instrument transfers (or the instruments between them transfer) to B or, as the case may be, to his nominee all the chargeable securities to which the agreement relates.

[<sup>F102</sup>(1B) The second condition is that the instrument (or each instrument) transferring the chargeable securities to which the agreement relates—

(a) so far as those securities are stock or marketable securities within the meaning of section 125 of the Finance Act 2003 (abolition of stamp duty except on instruments relating to stock or marketable securities)—

(i) is duly stamped in accordance with the enactments relating to stamp duty, or

(ii) is not chargeable with stamp duty or otherwise required to be stamped under those enactments; or

(b) so far as those securities are not stock or marketable securities within the meaning of that section, is an instrument that, disregarding that section, would not be chargeable with any *ad valorem* stamp duty under those enactments.]

[ If, as regards an agreement to transfer shares in a company to that company (“the own-<sup>F103</sup>(1C) shares agreement”)—

(a) tax is charged under section 87 above, and

(b) it is proved to the Board’s satisfaction that at a time in the period of six years beginning on the relevant day (as defined in section 87(3)) the conditions mentioned in subsection (1D) have been fulfilled in respect of those shares,

subsections (2) to (4A) apply.

(1D) The conditions referred to in subsection (1C) are—

(a) that, in relation to the transfer made in pursuance of the own-shares agreement, a return has been made in respect of each of those shares in accordance with section [<sup>F104</sup>707] of the Companies Act [<sup>F104</sup>2006] (disclosure by company of purchase of own shares), and

(b) that any such return has been duly stamped in accordance with section 66.]

(2) If any of the tax charged has been paid, and a claim for repayment is made within the period of six years mentioned in subsection (1) [<sup>F105</sup>or, as the case may be, (1C)] above, the tax paid shall be repaid; and where the tax paid is not less than £25 it shall be repaid with interest on it at the [<sup>F106</sup>rate applicable under section 178 of the Finance Act 1989] from the time it was paid.

(3) To the extent that the tax charged has not been paid, the charge shall be cancelled by virtue of this subsection.

(4) <sup>F107</sup> .....

[ Interest paid under subsection (2) above shall not constitute income for any tax <sup>F108</sup>(4A) purposes.]

(5) <sup>F109</sup> .....

[ In this section “the enactments relating to stamp duty” means the Stamp Act 1891 <sup>M9</sup> <sup>F110</sup>(6) and any enactment which amends or is required to be construed together with that Act.]

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[ This section shall have effect in relation to a person to whom the chargeable securities<sup>F111</sup>(7) are transferred by way of security for a loan to B as it has effect in relation to a nominee of B.]]

#### Textual Amendments

- F97** Words in s. 92(1) substituted (with effect as mentioned in s. 188(5) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 188\(4\)\(a\)](#)
- F98** Words in s. 92(1) substituted (with effect as mentioned in s. 188(5) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 188\(4\)\(b\)](#)
- F99** Words in s. 92(1) substituted (with effect as mentioned in s. 192(6) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 192\(3\)\(a\)](#)
- F100** Words in s. 92(1) substituted (with effect as mentioned in s. 192(6) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 192\(3\)\(b\)](#)
- F101** S. 92(1A)(1B) inserted (with effect as mentioned in s. 192(6) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 192\(4\)](#)
- F102** S. 92(1B) substituted (1.12.2003) by [The Stamp Duty and Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2868\), regs. 1, 4](#)
- F103** S. 92(1C)(1D) inserted (with effect in accordance with s. 195(12) of the amending Act and with effect 1.12.2003) by [Finance Act 2003 \(c. 14\), Sch. 40 para. 4\(2\)](#); S.I. 2003/3077, art. 2
- F104** Word in s. 92(1D)(a) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\), arts. 1\(1\), 7\(e\)](#)
- F105** Words in s. 92(2) inserted (with effect in accordance with s. 195(12) of the amending Act and with effect 1.12.2003) by [Finance Act 2003 \(c. 14\), Sch. 40 para. 4\(3\)](#); S.I. 2003/3077, art. 2
- F106** Words in s. 92(2) substituted (with effect as mentioned in s. 179(4) of the amending Act) by [Finance Act 1989 \(c. 26\), s. 179\(1\)\(f\)](#)
- F107** S. 92(4) repealed (with effect as mentioned in s. 178(7) of the amending Act) by [Finance Act 1989 \(c. 26\), s. 187\(1\), Sch. 17 Pt. X](#)
- F108** S. 92(4A) inserted (retrospectively) by [Finance Act 1987 \(c. 16\), s. 56, Sch. 7 para. 7](#)
- F109** S. 92(5) repealed (with effect as mentioned in s. 178(7) of the amending Act) by [Finance Act 1989 \(c. 26\), s. 187\(1\), Sch. 17 Pt. X](#)
- F110** S. 92(6) added (with effect as mentioned in s. 192(6) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 192\(5\)](#)
- F111** S. 92(7) inserted (with effect as mentioned in s. 106(9) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 106\(8\)](#)

#### Modifications etc. (not altering text)

- C20** S. 92: power to amend conferred (with effect as mentioned in s. 178(7) of the amending Act) by [Finance Act 1989 \(c. 26\), s. 178\(1\)-\(5\)](#); S.I. 1989/1298, art. 2

#### Marginal Citations

- M9** 1891 c. 39.

### *Other charges*

## 93 Depository receipts

- (1) Subject to subsection (7) below and section 95 below, there shall be a charge to stamp duty reserve tax under this section where in pursuance of an arrangement —

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- (a) a person falling within subsection (2) below has issued or is to issue a depositary receipt for chargeable securities, and
  - (b) chargeable securities of the same kind and amount are transferred or issued to [<sup>F112</sup>the person mentioned in paragraph (a) above or] a person falling within subsection (3) below, or are appropriated by [<sup>F113</sup>the person mentioned in paragraph (a) above or a person falling within subsection (3) below] towards the eventual satisfaction of the entitlement of the receipt's holder to receive chargeable securities.
- (2) A person falls within this subsection if his business is or includes issuing depositary receipts for chargeable securities.
- (3) A person falls within this subsection if his business is or includes holding chargeable securities as nominee or agent for the person who has issued or is to issue the depositary receipt.
- (4) Subject to subsections [<sup>F114</sup>(6) and](7) below, tax under this section shall be charged at the rate of [<sup>F115</sup>1.5 per cent.] of the following—
- (a) in a case where the securities are issued, their price when issued;
  - (b) in a case where the securities are transferred for consideration in money or money's worth, the amount or value of the consideration;
  - (c) in any other case, the value of the securities.
- (5) <sup>F116</sup> .....
- (6) In a case where—
- (a) securities are issued, or securities sold are transferred, and (in either case) they are to be paid for in instalments,
  - (b) the person to whom they are issued or transferred holds them and transfers them to another person when the last instalment is paid,
  - (c) subsection (4)(c) above applies in the case of the transfer to the other person,
  - (d) before the making of the transfer to the other person an instrument is received by a person falling within [<sup>F117</sup>subsection (2) or (3)] above,
  - (e) the instrument so received evidences all the rights which (by virtue of the terms under which the securities are issued or sold as mentioned in paragraph (a) above) subsist in respect of them at the time of the receipt, and
  - (f) the transfer to the other person is effected by an instrument containing a statement that paragraphs (a), (b) and (e) above are fulfilled,
- subsection (4)(c) above shall have effect as if the reference to the value there mentioned were to an amount (if any) equal to the total of the instalments payable, less those paid before the transfer to the other person is effected.
- (7) Where tax is (or would apart from this subsection be) charged under this section in respect of a transfer of securities, and ad valorem stamp duty is chargeable on any instrument effecting the transfer, then —
- (a) if the amount of the duty is less than the amount of tax found by virtue of [<sup>F118</sup>subsections (4) and] (6) above, the tax charged under this section shall be the amount so found less the amount of the duty;
  - (b) in any other case, there shall be no charge to tax under this section in respect of the transfer.



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- (8) Where tax is charged under the preceding provisions of this section, the person liable for the tax shall (subject to subsection (9) below) be the person who has issued or is to issue the depositary receipt.
- (9) Where tax is charged under the preceding provisions of this section in a case where securities are transferred, and at the time of the transfer the person who has issued or is to issue the depositary receipt is not resident in the United Kingdom and has no branch or agency in the United Kingdom, the person liable for the tax shall be the person to whom the securities are transferred.
- (10) Where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities, and (apart from this subsection) tax would be charged under this section in respect of that issue, tax shall not be so charged but —
- (a) if any of the instalments becomes payable by a person falling within subsection (2) or (3) above, there shall be a charge to stamp duty reserve tax under this section when the instalment becomes payable;
  - (b) the charge shall be at the rate of [<sup>F119</sup>1.5 per cent. of the amount] of the instalment payable;
  - (c) the person liable to pay the instalment shall be liable for the tax.
- (11) Subject to subsection (12) below, this section applies where securities are transferred, issued or appropriated after 18th March 1986 (whenever the arrangement was made).
- (12) This section does not apply, in the case of securities which are transferred, if the Board are satisfied that they were acquired or appropriated by the transferor on or before 18th March 1986 for or towards the eventual satisfaction of the entitlement of a person to receive securities of the same kind under a depositary receipt (whether issued on or before that date or to be issued after that date).

#### Textual Amendments

- F112** Words in s. 93(1)(b) inserted (with effect as mentioned in s. 193(4) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 193\(2\)\(a\)](#)
- F113** Words in s. 93(1)(b) substituted (with effect as mentioned in s. 193(4) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 193\(2\)\(b\)](#)
- F114** Words in s. 93(4) substituted (with application as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 104\(2\)\(a\)](#)
- F115** Words in s. 93(4) substituted (with effect as mentioned in s. 194(7) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 194\(2\)\(a\)](#)
- F116** S. 93(5) repealed (with effect as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997 \(c. 16\), ss. 104\(1\), 113, Sch. 18 Pt. VII](#)
- F117** Words in s. 93(6)(d) substituted (with effect as mentioned in s. 193(4) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 193\(3\)](#)
- F118** Words in s. 93(7)(a) substituted (with application as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 104\(2\)\(b\)](#)
- F119** Words in s. 93(10)(b) substituted (with effect as mentioned in s. 194(7) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 194\(2\)\(c\)](#)

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## 94 Depository receipts: supplementary

- (1) For the purposes of section 93 above a depository receipt for chargeable securities is an instrument acknowledging —
- (a) that a person holds chargeable securities or evidence of the right to receive them, and
  - (b) that another person is entitled to rights, whether expressed as units or otherwise, in or in relation to chargeable securities of the same kind, including the right to receive such securities (or evidence of the right to receive them) from the person mentioned in paragraph (a) above,
- except that for those purposes a depository receipt for chargeable securities does not include an instrument acknowledging rights in or in relation to securities if they are issued or sold under terms providing for payment in instalments and for the issue of the instrument as evidence that an instalment has been paid.
- (2) The Treasury may by regulations provide that for subsection (1) above (as it has effect for the time being) there shall be substituted a subsection containing a different definition of a depository receipt for the purposes of section 93 above.
- (3) For the purposes of section 93(4)(b) above the value of any consideration not consisting of money shall be taken to be the price it might reasonably be expected to fetch on a sale in the open market at the time the securities are transferred.
- (4) For the purposes of section 93(4)(c) above the value of the securities shall be taken to be the price they might reasonably be expected to fetch on a sale in the open market at the time they are transferred or appropriated (as the case may be).
- (5) <sup>F120</sup> . . . . .
- (6) <sup>F120</sup> . . . . .
- (7) <sup>F120</sup> . . . . .
- (8) <sup>F121</sup> . . . . .
- (9) The power to make regulations or an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

### Textual Amendments

**F120** S. 94(5)-(7) repealed (with effect as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997](#) (c. 16), ss. 104(2)(c), 113, [Sch. 18 Pt. VII](#)

**F121** S. 94(8) repealed (with effect as mentioned in s. 194(7) of the amending Act) by [Finance Act 1996](#) (c. 8), ss. 194(3), 205, [Sch. 41 Pt. VII](#)

## 95 Depository receipts: exceptions

- (1) Where securities are transferred —
- (a) to a company which at the time of the transfer falls within subsection (6) of section 67 above <sup>F122</sup> . . . , and
  - (b) from a company which at that time falls within that subsection <sup>F122</sup> . . . ,
- [<sup>F123</sup>subject to section 97C,] there shall be no charge to tax under section 93 above in respect of the transfer.

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[<sup>F124</sup>(2) There shall be no charge to tax under section 93 above in respect of a transfer, issue or appropriation of a UK bearer instrument, except in the case of—

- (a) an instrument within the exemption conferred by paragraph 16 of Schedule 15 to the Finance Act 1999 (renounceable letters of allotment etc. where rights are renounceable not later than six months after issue), or
- (b) an instrument within the exemption conferred by paragraph 17 of that Schedule (non-sterling instruments) which—
  - (i) does not raise new capital, and
  - (ii) is not issued in exchange for an instrument raising new capital.]

[<sup>F125</sup>(2A) For the purpose of subsection (2)(b)—

- (a) an instrument is regarded as raising new capital only if the condition in subsection (2B) is met, and
- (b) an instrument is regarded as issued in exchange for an instrument raising new capital only if the conditions in subsection (2C) are met.

(2B) The condition mentioned in subsection (2A)(a) is that the instrument—

- (a) is issued in conjunction with—
  - (i) the issue of relevant securities for which only cash is subscribed, or
  - (ii) the granting of rights to subscribe for relevant securities which are granted for a cash consideration only and exercisable only by means of a cash subscription; or
- (b) is issued to give effect to the exercise of such rights as are mentioned in paragraph (a)(ii).

(2C) The conditions mentioned in subsection (2A)(b) are that—

- (a) the instrument is issued in conjunction with the issue of relevant securities by a company in exchange for relevant securities issued by another company, and
- (b) immediately before the exchange an instrument relating to those other securities—
  - (i) was regarded for the purposes of subsection (2)(b) as raising new capital or as issued in exchange for an instrument raising new capital, or
  - (ii) would have been so regarded if the amendments made to this section by section 117 of the Finance Act 1999 had been in force at the time of its issue,

and accordingly was or would have been within the exception conferred by subsection (2).

(2D) For the purposes of subsections (2B) and (2C) “relevant securities” means chargeable securities which are either—

- (a) shares the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company, or
- (b) loan capital within the meaning of section 78 above,

and which, in either case, do not carry any rights (of conversion or otherwise) by the exercise of which chargeable securities other than relevant securities may be obtained.]

(3) There shall be no charge to tax under section 93 above in respect of an issue by a company (company X) of securities in exchange for shares in another company (company Y) where company X —

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- (a) has control of company Y, or
  - (b) will have such control in consequence of the exchange or of an offer as a result of which the exchange is made.
- [<sup>F126</sup>and the shares in company Y are held under a depositary receipt scheme.]
- (4) For the purposes of subsection (3) above company X has control of company Y if company X has power to control company Y's affairs by virtue of holding shares in, or possessing voting power in relation to, company Y or any other body corporate.
- [<sup>F127</sup>(5) For the purposes of subsection (3) above, the cases where shares are held under a depositary receipt scheme are those cases where, in pursuance of an arrangement,—
- (a) a depositary receipt for chargeable securities has been, or is to be, issued by a person falling within section 93(2) above in respect of the shares in question or shares of the same kind and amount; and
  - (b) the shares in question are held by that person, or by a person whose business is or includes holding chargeable securities as nominee or agent for that person, towards the eventual satisfaction of the entitlement of the receipt's holder to receive chargeable securities.
- [<sup>F128</sup>(6) Where an arrangement is entered into under which—
- (a) a company issues securities to persons in respect of their holdings of securities issued by another company, and
  - (b) the securities issued by the other company are cancelled,
- the issue shall be treated for the purposes of this section as an issue of securities in exchange for securities issued by the other company.]
- (7) In this section “depositary receipt for chargeable securities” has the same meaning as in section 93 above (see section 94 above).]

#### Textual Amendments

- F122** Words in s. 95(1) repealed (with effect in as mentioned in s. 134(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), ss. 134(3), 156, **Sch. 40 Pt. III**
- F123** Words in s. 95(1) inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), **s. 54(2)**
- F124** S. 95(2) substituted (with application as mentioned in s. 113(4) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), s. 113(3), **Sch. 16 para. 7** (with s. 123(4))
- F125** S. 95(2A)-(2D) inserted (with application as mentioned in s. 117(7) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **s. 117(2)** (with s. 123(4))
- F126** Words in s. 95(3) inserted (with application as mentioned in s. 151(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 151(1)**
- F127** S. 95(5)-(7) added (with application as mentioned in s. 151(6)) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), **s. 151(2)**
- F128** S. 95(6) substituted (with application as mentioned in s. 117(7) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), **s. 117(3)** (with s. 123(4))

#### [<sup>F129</sup>95A Depositary receipts: exception for replacement securities.

- (1) There shall be no charge to tax under section 93 above in respect of the transfer, issue or appropriation of chargeable securities (“the new securities”) issued by a company in place of existing securities of the same company (“the old securities”) if the following conditions are met.

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- (2) The first condition is that the old securities are held under a depositary receipt scheme.
- (3) The second condition is that—
  - (a) there was a charge to tax under section 93 above in respect of the transfer, issue or appropriation—
    - (i) of the old securities, or
    - (ii) of earlier securities in relation to which on a previous application of this section those securities were the new securities,
  - (b) there would have been such a charge if that section had been in force; or
  - (c) there would have been such a charge but for section 95(2) or (3) above.
- (4) The third condition is that there is an arrangement under which—
  - (a) the new securities are transferred, issued or appropriated as mentioned in section 93(1)(b), and
  - (b) the old securities are cancelled.
- (5) For the purposes of subsection (2) above the cases in which securities are held under a depositary receipt scheme are those specified (in relation to shares) in section 95(5) above.
- (6) The exception provided by this section applies only to the extent that the value of the new securities immediately after their issue does not exceed the value of the old securities immediately before the issue of the new securities.]

#### Textual Amendments

**F129** S. 95A inserted (with application as mentioned in s. 118(5) of the amending Act) by Finance Act 1999 (c. 16), s. 118(1) (with s. 123(4))

## 96 Clearance services

- (1) Subject to subsection (5) below and [F130 sections 97 and 97A] below, there shall be a charge to stamp duty reserve tax under this section where —
  - (a) a person (A) whose business is or includes the provision of clearance services for the purchase and sale of chargeable securities has entered into an arrangement to provide such clearance services for another person, and
  - (b) in pursuance of the arrangement, chargeable securities are transferred or issued to A or to a person whose business is or includes holding chargeable securities as nominee for A.
- (2) Subject to subsections [F131(4) and](5) below, tax under this section shall be charged at the rate of [F132 1.5 per cent.] of the following —
  - (a) in a case where the securities are issued, their price when issued;
  - (b) in a case where the securities are transferred for consideration in money or money's worth, the amount or value of the consideration;
  - (c) in any other case, the value of the securities.
- (3) F133 .....
- (4) In a case where —

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- (a) securities are issued, or securities sold are transferred, and (in either case) they are to be paid for in instalments,
  - (b) the person to whom they are issued or transferred holds them and transfers them to another person when the last instalment is paid,
  - (c) subsection (2)(c) above applies in the case of the transfer to the other person,
  - (d) before the making of the transfer to the other person an instrument is received by A or a person whose business is or includes holding chargeable securities as nominee for A,
  - (e) the instrument so received evidences all the rights which (by virtue of the terms under which the securities are issued or sold as mentioned in paragraph (a) above) subsist in respect of them at the time of the receipt, and
  - (f) the transfer to the other person is effected by an instrument containing a statement that paragraphs (a), (b) and (e) above are fulfilled,
- subsection (2)(c) above shall have effect as if the reference to the value there mentioned were to an amount (if any) equal to the total of the instalments payable, less those paid before the transfer to the other person is effected.
- (5) Where tax is (or would apart from this subsection be) charged under this section in respect of a transfer of securities and ad valorem stamp duty is chargeable on any instrument effecting the transfer, then —
    - (a) if the amount of the duty is less than the amount of tax found by virtue of [F<sup>134</sup>subsections (2) and](4) above, the tax charged under this section shall be the amount so found less the amount of the duty;
    - (b) in any other case, there shall be no charge to tax under this section in respect of the transfer.
  - (6) Where tax is charged under the preceding provisions of this section, the person liable for the tax shall (subject to subsection (7) below) be A.
  - (7) Where tax is charged under the preceding provisions of this section in a case where securities are transferred to a person other than A, and at the time of the transfer A is not resident in the United Kingdom and has no branch or agency in the United Kingdom, the person liable for the tax shall be the person to whom the securities are transferred.
  - (8) Where chargeable securities are issued or transferred on sale under terms providing for payment in instalments and for an issue of other chargeable securities, and (apart from this subsection) tax would be charged under this section in respect of that issue, tax shall not be so charged but —
    - (a) if any of the instalments becomes payable by A or by a person whose business is or includes holding chargeable securities as nominee for A, there shall be a charge to stamp duty reserve tax under this section when the instalment becomes payable;
    - (b) the charge shall be at the rate of [F<sup>135</sup>1.5 per cent. of the amount] of the instalment payable;
    - (c) the person liable to pay the instalment shall be liable for the tax.
  - (9) For the purposes of subsection (2)(b) above the value of any consideration not consisting of money shall be taken to be the price it might reasonably be expected to fetch on a sale in the open market at the time the securities are transferred.
  - (10) For the purposes of subsection (2)(c) above the value of securities shall be taken to be the price they might reasonably be expected to fetch on a sale in the open market at the time they are transferred.

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- (11) <sup>F136</sup> .....
- (12) <sup>F137</sup> .....
- (13) Subject to subsection (14) below, this section applies where securities are transferred or issued after 18th March 1986 (whenever the arrangement was made).
- (14) This section does not apply, in the case of securities which are transferred, if the Board are satisfied —
- (a) that on or before 18th March 1986 the transferor (or, where the transferor transfers as agent, the principal) agreed to sell securities of the same kind and amount to the person (other than A) referred to in subsection (1)(a) above, and
  - (b) that the transfer is effected in pursuance of that agreement.

#### Textual Amendments

- F130** Words in s. 96(1) substituted (1.7.1996) by [Finance Act 1996 \(c. 8\), s. 196\(2\)\(6\)](#)
- F131** Words in s. 96(2) substituted (with application as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 104\(4\)\(a\)](#)
- F132** Words in s. 96(2) substituted (with effect in accordance with s. 194(7) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 194\(4\)\(a\)](#)
- F133** S. 96(3) repealed (with application as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997 \(c. 16\), ss. 104\(3\), 113, Sch. 18 Pt. VII](#)
- F134** Words in s. 96(5)(a) substituted (with application as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997 \(c. 16\), s. 104\(4\)\(b\)](#)
- F135** Words in s. 96(8) substituted (with effect as mentioned in s. 194(7) of the amending Act) by [Finance Act 1996 \(c. 8\), s. 194\(4\)\(c\)](#)
- F136** S. 96(11) repealed (with application as mentioned in s. 104(5) of the amending Act) by [Finance Act 1997 \(c. 16\), ss. 104\(4\)\(c\), 113, Sch. 18 Pt. VII](#)
- F137** S. 96(12) repealed (with effect as mentioned in s. 194(7) of the amending Act) by [Finance Act 1996 \(c. 8\), ss. 194\(5\), 205, Sch. 41 Pt. VII](#)

## 97 Clearance services: exceptions

- (1) Where securities are transferred —
- (a) to a company which at the time of the transfer falls within subsection (6) of section 70 above <sup>F138</sup> . . . , and
  - (b) from a company which at that time falls within that subsection <sup>F138</sup> . . . ,
- [<sup>F139</sup>subject to section 97C,] there shall be no charge to tax under section 96 above in respect of the transfer
- (2) <sup>F140</sup> .....
- [<sup>F141</sup>(3) There shall be no charge to tax under section 96 above in respect of a transfer or issue of a UK bearer instrument, except in the case of—
- (a) an instrument within the exemption conferred by paragraph 16 of Schedule 15 to the Finance Act 1999 (renounceable letters of allotment etc. where rights are renounceable not later than six months after issue), or
  - (b) an instrument within the exemption conferred by paragraph 17 of that Schedule (non-sterling instruments) which—
    - (i) does not raise new capital, and

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(ii) is not issued in exchange for an instrument raising new capital.]

(3A) For the purpose of subsection (3)(b)—

- (a) an instrument is regarded as raising new capital only if the condition in subsection (3B) is met, and
- (b) an instrument is regarded as issued in exchange for an instrument raising new capital only if the conditions in subsection (3C) are met.

(3B) The condition mentioned in subsection (3A)(a) is that the instrument—

- (a) is issued in conjunction with—
  - (i) the issue of relevant securities for which only cash is subscribed, or
  - (ii) the granting of rights to subscribe for relevant securities which are granted for a cash consideration only and exercisable only by means of a cash subscription; or
- (b) is issued to give effect to the exercise of such rights as are mentioned in paragraph (a)(ii).

(3C) The conditions mentioned in subsection (3A)(b) are that—

- (a) the instrument is issued in conjunction with the issue of relevant securities by a company in exchange for relevant securities issued by another company, and
- (b) immediately before the exchange an instrument relating to those other securities—
  - (i) was regarded for the purposes of subsection (3)(b) as raising new capital or as issued in exchange for an instrument raising new capital, or
  - (ii) would have been so regarded if the amendments made to this section by section 117 of the Finance Act 1999 had been in force at the time of its issue,

and accordingly was or would have been within the exception conferred by subsection (3).

(3D) For the purposes of subsections (3B) and (3C) “relevant securities” means chargeable securities which are either—

- (a) shares the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company, or
- (b) loan capital within the meaning of section 78 above,

and which, in either case, do not carry any rights (of conversion or otherwise) by the exercise of which chargeable securities other than relevant securities may be obtained.

(4) There shall be no charge to tax under section 96 above in respect of an issue by a company (company X) of securities in exchange for shares in another company (company Y) where company X —

- (a) has control of company Y, or
- (b) will have such control in consequence of the exchange or of an offer as a result of which the exchange is made.

[<sup>F142</sup>and the shares in company Y are held under a clearance services scheme.]

(5) For the purposes of subsection (4) above company X has control of company Y if company X has power to control company Y's affairs by virtue of holding shares in, or possessing voting power in relation to, company Y or any other body corporate.



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[<sup>F143</sup>(6) For the purposes of subsection (4) above, the cases where shares are held under a clearance services scheme are those cases where—

- (a) an arrangement falling within paragraph (a) of subsection (1) of section 96 above has been entered into; and
- (b) in pursuance of that arrangement, the shares are held by the person referred to in that paragraph as A or by a person whose business is or includes holding chargeable securities as nominee for that person.

[<sup>F144</sup>(7) Where an arrangement is entered into under which—

- (a) a company issues securities to persons in respect of their holdings of securities issued by another company, and
- (b) the securities issued by the other company are cancelled,

the issue shall be treated for the purposes of this section as an issue of securities in exchange for securities issued by the other company.]]

#### Textual Amendments

**F138** Words in s. 97(1) repealed (with effect in as mentioned in s. 134(5) of the amending Act) by [Finance Act 2000 \(c. 17\)](#), [s. 134\(3\)](#), 156, [Sch. 40 Pt. III](#)

**F139** Words in s. 97(1) inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2010 \(c. 13\)](#), [s. 54\(3\)](#)

**F140** S. 97(2) repealed (with effect as mentioned in s. 196(4) of the amending Act) by [Finance Act 1996 \(c. 8\)](#), s. 205, [Sch. 41 Pt. VII](#)

**F141** S. 95(3) substituted (with application as mentioned in s. 113(4) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 113\(3\)](#), {Sch. 16 para. 8} (with s. 123(4))

**F142** Words in s. 97(4) added (with application as mentioned in s. 151(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 151\(3\)](#)

**F143** s. 97(6)(7) added (with application as mentioned in s. 151(6) of the amending Act) by [Finance Act 1998 \(c. 36\)](#), [s. 151\(4\)](#)

**F144** S. 97(7) substituted (with application as mentioned in s. 117(7) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), [s. 117\(4\)](#) (with s. 123(4))

[<sup>F145</sup>**97A Clearance services: further exception.**

- (1) There shall be no charge to tax under section 96 above in respect of the transfer or issue of chargeable securities (“the new securities”) issued by a company in place of existing securities of the same company (“the old securities”) if the following conditions are met.
- (2) The first condition is that the old securities are held under a clearance services scheme.
- (3) The second condition is that—
  - (a) there was a charge to tax under section 96 above in respect of the transfer or issue—
    - (i) of the old securities, or
    - (ii) of earlier securities in relation to which on a previous application of this section those securities were the new securities,or there would have been such a charge if that section had been in force; or
  - (b) there would have been such a charge but for section 97(3) or (4) above.
- (4) The third condition is that there is an arrangement under which—

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- (a) the new securities are transferred or issued as mentioned in section 96(1)(b), and
  - (b) the old securities are cancelled.
- (5) For the purposes of subsection (2) above the cases in which securities are held under a clearance services scheme are those specified (in relation to shares) in section 97(6) above.
- (6) The exception provided by this section applies only to the extent that the value of the new securities immediately after their issue does not exceed the value of the old securities immediately before the issue of the new securities.]

#### Textual Amendments

**F145** S. 97AA inserted (with application as mentioned in s. 118(5) of the amending Act) by [Finance Act 1999 \(c. 16\)](#), s. 118(3) (with s. 123(4))

#### [<sup>F146</sup>97A Clearance services: election for alternative system of charge.

- (1) A person whose business is or includes the provision of clearance services for the purchase and sale of chargeable securities or relevant securities (an “operator”) may, with the approval of the Board, elect that stamp duty and stamp duty reserve tax shall be chargeable in accordance with this section in connection with those clearance services.
- (2) An election under subsection (1) above—
- (a) shall come into force on such date as may be notified to the operator by the Board in giving their approval; and
  - (b) shall continue in force unless and until it is terminated in accordance with the following provisions of this section.
- (3) If and so long as an election under subsection (1) above is in force, stamp duty or stamp duty reserve tax (as the case may require) shall, in connection with the clearance services to which the election relates, be chargeable in relation to—
- (a) a transfer or issue falling within section 70(1) or 96(1) above,
  - (b) an agreement falling within section 90(4) above by virtue of section 96(1) above, or
  - (c) an agreement falling within section 90(5) above,
- as it would be chargeable apart from sections 70, 90(4) and (5) and 96 above.
- (4) Where stamp duty or stamp duty reserve tax is chargeable by virtue of subsection (3) above in relation to a transfer, issue or agreement, sections 70, 90(4) and (5) and 96 above shall not have effect in relation to that transfer, issue or agreement.
- (5) Nothing in subsection (3) or (4) above affects the application of section 70 or 96 above in relation to a transfer falling within section 70(1) or 96(1) above by the operator or his nominee to, or to a nominee of, another operator in relation to whom no election under subsection (1) above is for the time being in force.
- (6) The Board may require the operator, as a condition of the approval of his election under subsection (1) above, to make and maintain such arrangements as they may consider satisfactory—

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- (a) for the collection of stamp duty reserve tax chargeable in accordance with this section, and
  - (b) for complying, or securing compliance, with the provisions of this Part and of regulations under section 98 below, so far as relating to such tax.
- (7) Where the operator is not resident in the United Kingdom and has no branch or agency in the United Kingdom, the Board may require him, as a condition of the approval of his election under subsection (1) above, to appoint and, so long as the election remains in force, maintain a tax representative.
- (8) A person shall not be an operator's tax representative under this section unless that person—
- (a) has a business establishment in the United Kingdom, and
  - (b) is approved by the Board.
- (9) A person who is at any time an operator's tax representative under this section—
- (a) shall be entitled to act on the operator's behalf for the purposes of stamp duty and stamp duty reserve tax in connection with the clearance services to which the operator's election under subsection (1) above relates,
  - (b) shall secure (where appropriate by acting on the operator's behalf) the operator's compliance with and discharge of the obligations and liabilities to which the operator is subject, in connection with the clearance services to which the operator's election under subsection (1) above relates, by virtue of legislation relating to stamp duty or stamp duty reserve tax (including obligations and liabilities arising before he became the operator's tax representative), and
  - (c) shall be personally liable in respect of any failure to secure the operator's compliance with or discharge of any such obligation or liability, and in respect of anything done for purposes connected with acting on the operator's behalf, as if the obligations and liabilities imposed on the operator were imposed jointly and severally on the tax representative and the operator.
- (10) An election under subsection (1) above may be terminated—
- (a) by not less than thirty days' notice given by the operator to the Board or by the Board to the operator; or
  - (b) if there is or has been a breach of a condition of the approval of the election imposed by virtue of subsection (6) or (7) above, by a notice—
    - (i) given by the Board to the operator,
    - (ii) taking effect on the giving of the notice or at such later time as may be specified in the notice, and
    - (iii) stating that it is given by reason of the breach of condition.
- (11) Where an election under subsection (1) above is terminated, section 96 above shall have effect as if chargeable securities of the same amounts and kinds as are, immediately before the termination, held by the operator or his nominee in connection with the provision of the clearance services, had, immediately after the termination, been transferred to the operator or, as the case may be, to the nominee by a transfer falling within subsection (1) of that section.
- (12) In this section "relevant securities" has the same meaning as in section 70 above.

[ Nothing in section 70(9) or 97(1) above has effect to prevent a charge to stamp duty  
F147(13) or stamp duty reserve tax arising—

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- (a) on a transfer to which subsection (5) above applies, or
- (b) on a deemed transfer under subsection (11) above.]]

#### Textual Amendments

**F146** S. 97A inserted (1.7.1996) by [Finance Act 1996 \(c. 8\), s. 196\(3\)\(6\)](#)

**F147** S. 97A(13) added (with effect in as mentioned in [s. 134\(5\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 134\(4\)](#)

#### [<sup>F148</sup>97B Transfer between depositary receipt system and clearance system.

- (1) There shall be no charge to tax under section 93 or 96 above where securities are transferred between a depositary receipt system and a clearance system.

[ Subsection (1) is subject to section 97C.]

<sup>F149</sup>(1A)

- (2) A transfer between a depositary receipt system and a clearance system means a transfer—
  - (a) from (or to) a company which at the time of the transfer falls within section 67(6) above, and
  - (b) to (or from) a company which at that time falls within section 70(6) above.
- (3) This section does not apply to a transfer from a clearance system (that is, from such a company as is mentioned in subsection (2)(b) above) if at the time of the transfer an election is in force under section 97A above in relation to the clearance services for the purposes of which the securities are held immediately before the transfer.]

#### Textual Amendments

**F148** S. 97B inserted (with effect in as mentioned in [s. 134\(5\)\(b\)](#) of the amending Act) by [Finance Act 2000 \(c. 17\), s. 134\(2\)](#)

**F149** S. 97B(1A) inserted (with effect in accordance with [s. 54\(6\)](#) of the amending Act) by [Finance Act 2010 \(c. 13\), s. 54\(4\)](#)

#### [<sup>F150</sup>97C Transfers to non-EU depositary receipt and clearance services systems

- (1) This section applies where arrangements are made in accordance with which chargeable securities are—
  - (a) issued to an EU system, and
  - (b) subsequently transferred from an EU system to a non-EU system.
- (2) Nothing in section 95(1), 97(1) or 97B(1) disapplies a charge to tax under section 93 or 96 in respect of that transfer if—
  - (a) the chargeable securities have not previously been transferred, or
  - (b) where they have previously been transferred, the transfer (or, if more than one, each of them) was an exempt transfer.
- (3) For the purposes of subsection (1)(a) chargeable securities are issued to an EU system if—

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- (a) pursuant to an arrangement of the kind mentioned in section 93(1), they are issued to a nominee in respect of an EU depositary receipt issuer, or
  - (b) pursuant to an arrangement of the kind mentioned in section 96(1), they are issued to a nominee in respect of an EU clearance service operator.
- (4) For the purposes of subsection (1)(b)—
- (a) a transfer is from an EU system if it is from a company which is incorporated under the law of a member State and at the time of the transfer falls within section 67(6) or 70(6), and
  - (b) a transfer is to a non-EU system if it is to a company which is not incorporated under the law of a member State and at the time of the transfer falls within section 67(6) or 70(6).
- (5) In this section—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
- “EU clearance service operator” means a person—
- (a) whose business is or includes the provision of clearance services for the purchase and sale of chargeable securities, and
  - (b) who—
    - (i) if it is a company, is incorporated under the law of a member State, and
    - (ii) in any other case, is resident in a member State;
- “EU depositary receipt issuer” means a person—
- (a) whose business is or includes issuing depositary receipts for chargeable securities, and
  - (b) who—
    - (i) if it is a company, is incorporated under the law of a member State, and
    - (ii) in any other case, is resident in a member State;
- “exempt transfer” means a transfer in respect of which, by reason of section 90(5), 95(1), 97(1) or 97B(1), no charge to stamp duty reserve tax arises;
- “nominee”—
- (a) in respect of an EU clearance service operator, means a person whose business is or includes holding chargeable securities as nominee for the EU clearance service operator, and
  - (b) in respect of an EU depositary receipt issuer, means a person whose business is or includes holding chargeable securities as nominee or agent for the EU depositary receipt issuer.]

#### **Textual Amendments**

**F150** S. 97C inserted (with effect in accordance with s. 54(6) of the amending Act) by [Finance Act 2010](#) (c. 13), s. 54(5)

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## General

### 98 Administration etc.

- (1) The Treasury may make regulations —
- (a) providing that provisions of the Taxes Management Act 1970<sup>M10</sup> specified in the regulations shall apply in relation to stamp duty reserve tax as they apply in relation to a tax within the meaning of that Act, with such modifications (specified in the regulations) as they think fit;
  - (b) making with regard to stamp duty reserve tax such further provision as they think fit in relation to administration, assessment, collection and recovery.

[<sup>F151</sup>(1A) The power conferred on the Treasury by subsection (1) above includes power to make provision conferring or imposing on the Board functions which involve the exercise of a discretion.]

- (2) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

#### Textual Amendments

**F151** S. 98(1A) inserted (29.4.1996) by [Finance Act 1996 \(c. 8\)](#), s. 195

#### Modifications etc. (not altering text)

**C21** S. 98(1) extended (retrospectively) by [Finance Act 1999 \(c. 16\)](#), ss. 121 (with s. 123(4))

#### Marginal Citations

**M10** 1970 c. 9.

### 99 Interpretation

- (1) This section applies for the purposes of this Part of this Act.

[<sup>F152</sup>(1A) “Bearer instrument” has the same meaning as in Schedule 15 to the Finance Act 1999.

An instrument is a “UK bearer instrument” or “non-UK bearer instrument” according to whether it is issued by or on behalf of a UK company or a non-UK company within the meaning of that Schedule.]

- (2) “The Board” means the Commissioners of Inland Revenue.

[<sup>F153</sup>(3) Subject to the following provisions of this section, “chargeable securities” means —

- (a) stocks, shares or loan capital,
- (b) interests in, or in dividends or other rights arising out of, stocks, shares or loan capital,
- (c) rights to allotments of or to subscribe for, or options to acquire, stocks, shares or loan capital, and
- (d) units under a unit trust scheme.

- (4) “Chargeable securities” does not include securities falling within paragraph (a), (b) or (c) of subsection (3) above which are issued or raised by a body corporate not incorporated in the United Kingdom unless —

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- (a) they are registered in a register kept in the United Kingdom by or on behalf of the body corporate by which they are issued or raised, or
  - (b) in the case of shares, they are paired with shares issued by a body corporate incorporated in the United Kingdom, or
  - (c) in the case of securities falling within paragraph (b) or (c) of subsection (3) above, paragraph (a) or (b) above applies to the stocks, shares or loan capital to which they relate  
[<sup>F154</sup>, or
  - (d) they are issued or raised by an SE (whether or not in the course of its formation in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)) and, at the time when it falls to be determined whether the securities are chargeable securities, the SE has its registered office in the United Kingdom.
- (4A) “Chargeable securities” does not include securities falling within paragraph (a), (b) or (c) of subsection (3) above if—
- (a) they are securities issued or raised by an SE (whether or not in the course of its formation in accordance with Article 2 of Council Regulation (EC) 2157/2001 on the Statute for a European Company (Societas Europaea)), and
  - (b) at the time when it falls to be determined whether the securities are chargeable securities, the SE has its registered office outside the United Kingdom.]
- (5) [<sup>F155</sup>“Chargeable securities” does not include securities falling within paragraph (a), (b) or (c) of subsection (3) above if—
- (a) in the case of stock or marketable securities within the meaning of section 125 of the Finance Act 2003 (abolition of stamp duty except on instruments relating to stock or marketable securities), they are securities the transfer of which is exempt from all stamp duties;
  - (b) in any other case, they are securities the transfer of which, disregarding that section, would be exempt from all stamp duties.
- (5ZA) “Chargeable securities” does not include securities falling within paragraph (b) or (c) of subsection (3) above if the stocks, shares or loan capital to which the securities relate—
- (a) are stock or marketable securities within the meaning of section 125 of the Finance Act 2003 (abolition of stamp duty except on instruments relating to stock or marketable securities) the transfer of which is exempt from all stamp duties, or
  - (b) are securities the transfer of which, disregarding that section, would be exempt from all stamp duties.]
- [<sup>F156</sup>(5A) “Chargeable securities” does not include a unit under a unit trust scheme if—
- (a) all the trustees under the scheme are resident outside the United Kingdom and the unit is not registered in a register kept in the United Kingdom by or on behalf of the trustees under the scheme; or
  - (b) under the terms of the scheme the trust property can only be invested in exempt investments.
- (5B) For the purposes of subsection (5A)(b)—
- (a) an investment other than an interest under a collective investment scheme is an exempt investment if, and only if—

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- (i) it is not an investment on the transfer of which *ad valorem* stamp duty would be chargeable,<sup>F157</sup> ...
    - [ it is not an investment on the acquisition of which stamp duty land<sup>F158</sup>(ia) tax would be chargeable under Part 4 of the Finance Act 2003, and]
    - (ii) it is not a chargeable security;
  - (b) an interest under a collective investment scheme is an exempt investment [<sup>F159</sup>, unless subsection (5C) applies to the scheme;]
  - (c) a derivative is an exempt investment if, and only if, it relates wholly to one or more exempt investments; and
  - (d) funds held for the purposes of the day to day management of the unit trust scheme are not regarded as investments.
- <sup>F160</sup> ...]
- [<sup>F161</sup>(5C) This subsection applies to a collective investment scheme if more than 20% of the market value of the investments in which the property subject to the scheme is invested is attributable to investments which are not exempt investments for the purposes of subsection (5A)(b).
- (5D) In subsections (5B) and (5C) “collective investment scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000.]
- (6) “Chargeable securities” does not include interests in depositary receipts for stocks or shares.
- (6A) For the purposes of subsection (4) above, shares issued by a body corporate which is not incorporated in the United Kingdom (“the foreign company”) are paired with shares issued by a body corporate which is so incorporated (“the UK company”) where —
- (a) the articles of association of the UK company and the equivalent instruments governing the foreign company each provide that no share in the company to which they relate may be transferred otherwise than as part of a unit comprising one share in that company and one share in the other, and
  - (b) such units have been offered for sale to the public in the United Kingdom and, at the same time, an equal number of such units have been offered for sale to the public at a broadly equivalent price in the country in which the foreign company is incorporated.]
- (7) A depositary receipt for stocks or shares is an instrument acknowledging —
- (a) that a person holds stocks or shares or evidence of the right to receive them, and
  - (b) that another person is entitled to rights, whether expressed as units or otherwise, in or in relation to stocks or shares of the same kind, including the right to receive such stocks or shares (or evidence of the right to receive them) from the person mentioned in paragraph (a) above,
- except that a depositary receipt for stocks or shares does not include an instrument acknowledging rights in or in relation to stocks or shares if they are issued or sold under terms providing for payment in instalments and for the issue of the instrument as evidence that an instalment has been paid.
- (8) The Treasury may by regulations provide that for subsection (7) above (as it has effect for the time being) there shall be substituted a subsection containing a different definition of a depositary receipt; and the power to make regulations under this



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subsection shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

- (9) “Unit” <sup>F162</sup>(except in subsection (6A) above)] and “unit trust scheme” have the same meanings as in Part VII of the Finance Act 1946 <sup>M11</sup>.
- <sup>F163</sup>(9A) But “unit trust scheme” does not include arrangements <sup>F164</sup>to which section 564G of the Income Tax Act 2007<sup>F165</sup> or section 507 of the Corporation Tax Act 2009] (alternative finance investment bonds) <sup>F166</sup>applies].]
- (10) In interpreting “chargeable securities” in sections 93, 94 <sup>F167</sup>95,]<sup>F168</sup>, 96 <sup>F169</sup>, 97] and 97A]<sup>F170</sup>, 97AA] above —
- <sup>F171</sup>(a) paragraph (a) of subsection (4) above and the reference to that paragraph in paragraph (c) of that subsection shall be ignored, and]
- (b) the effect of <sup>F172</sup>section 133(3) of the Companies Act 2006 (transactions in shares registered in overseas branch register)] shall be ignored for the purposes of subsection (5) above.
- <sup>F173</sup>(11) In interpreting “chargeable securities” in section 93 or 96 above in a case where —
- (a) newly subscribed shares, or
- (b) securities falling within paragraph (b) or (c) of subsection (3) above which relate to newly subscribed shares,
- are issued in pursuance of an arrangement such as is mentioned in that section (or an arrangement which would be such an arrangement if the securities issued were chargeable securities), paragraph (b) of subsection (4) above and the reference to that paragraph in paragraph (c) of that subsection shall be ignored.
- (12) In subsection (11) above, “newly subscribed shares” means shares issued wholly for new consideration in pursuance of an offer for sale to the public.]
- <sup>F174</sup>(13) Where the calculation of any tax in accordance with the provisions of this Part results in an amount which is not a multiple of one penny, the amount so calculated shall be rounded to the nearest penny, taking any  $\frac{1}{2}$ p as nearest to the next whole penny above.]

#### Textual Amendments

- F152** S. 99(1A) inserted (with application as mentioned in s. 113(4) of the amending Act) by Finance Act 1999 (c. 16), s. 113(3), {Sch. 16 para. 9} (with s. 123(4))
- F153** S. 99(3)-(6) substituted (with application as mentioned in s. 144(6) of the amending Act) by Finance Act 1988 (c. 39) {s. 144(2)}
- F154** S. 99(4)(d) and word and (4A) added (with effect in accordance with s. 57(2) of the amending Act) by Finance (No. 2) Act 2005 (c. 22), s. 57(1)
- F155** S. 99(5)(5ZA) substituted for s. 99(5) (1.12.2003) by The Stamp Duty and Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2868), regs. 1, 5(2)
- F156** S. 99(5A)(5B) inserted (6.2.2000) by Finance Act 1999 (c. 16), s. 112(4), Sch. 19 para. 12(3)
- F157** Word in s. 99(5B)(a)(i) omitted (1.12.2003) by virtue of The Stamp Duty and Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2868), regs. 1, 5(3)
- F158** S. 99(5B)(a)(ia) inserted (1.12.2003) by The Stamp Duty and Stamp Duty Land Tax (Consequential Amendment of Enactments) Regulations 2003 (S.I. 2003/2868), regs. 1, 5(3)
- F159** Words in s. 99(5B)(b) substituted (24.7.2011) by Finance Act 2011 (c. 11), s. 84(2)(a)(4)
- F160** Words in s. 99(5B) omitted (24.7.2011) by virtue of Finance Act 2011 (c. 11), s. 84(2)(b)(4)
- F161** S. 99(5C)(5D) inserted (24.7.2011) by Finance Act 2011 (c. 11), s. 84(3)(4)
- F162** Words in s. 99(9) inserted (with application as mentioned in s. 144(6) of the amending Act) by Finance Act 1988 (c. 39), s. 144(3)

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- F163** S. 99(9A) inserted (with effect in accordance with s. 154(6) of the amending Act) by [Finance Act 2008 \(c. 9\), s. 154\(4\)](#)
- F164** Words in s. 99(9A) substituted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 197\(a\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F165** Words in s. 99(9A) inserted (with effect in accordance with s. 1329(1) of the amending Act) by [Corporation Tax Act 2009 \(c. 4\), s. 1329\(1\), Sch. 1 para. 325](#) (with [Sch. 2 Pts. 1, 2](#))
- F166** Word in s. 99(9A) inserted (with effect in accordance with s. 381(1) of the amending Act) by [Taxation \(International and Other Provisions\) Act 2010 \(c. 8\), s. 381\(1\), Sch. 8 para. 197\(b\)](#) (with [Sch. 9 paras. 1-9, 22](#))
- F167** Words in s. 99(10) inserted (with application as mentioned in s. 151(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 151\(5\)\(a\)](#)
- F168** Words in s. 99(10) substituted (1.7.1996) by [Finance Act 1996 \(c. 8\), s. 196\(5\)\(6\)](#)
- F169** Words in s. 99(10) inserted (with application as mentioned in s. 151(6) of the amending Act) by [Finance Act 1998 \(c. 36\), s. 151\(5\)\(b\)](#)
- F170** Words in s. 99(10) inserted (with application as mentioned in s. 118(5) of the amending Act) by [Finance Act 1999 \(c. 16\), s. 118\(4\)](#) (with [s. 123\(4\)](#))
- F171** S. 99(10)(a) substituted (with application in accordance with s. 144(6) of the amending Act) by [Finance Act 1988 \(c. 39\), s. 144\(4\)](#)
- F172** Words in s. 99(10)(b) substituted (1.10.2009) by [The Companies Act 2006 \(Consequential Amendments\) \(Taxes and National Insurance\) Order 2009 \(S.I. 2009/1890\), arts. 1\(1\), 7\(f\)](#)
- F173** S. 99(11)(12) added (with application as mentioned in s. 144(6) of the amending Act) by [Finance Act 1988 \(c. 39\), s. 144\(5\)](#)
- F174** S. 99(13) added (29.4.1996) by [Finance Act 1996 \(c. 8\), s. 194\(6\)](#)

#### **Modifications etc. (not altering text)**

- C22** S. 99 modified by [S.I. 1997/1156, reg. 4](#) (as substituted (6.2.2000) by [S.I. 1999/3261, reg. 5](#))

#### **Marginal Citations**

- M11** [1946 c. 64.](#)

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**Changes to legislation:**

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