



Finance Act 1986

1986 CHAPTER 41

PART IV

STAMP DUTY RESERVE TAX

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 ^{F1} . . . the relevant day, ^{F2} . . .
- (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) ^{F3}
- (5) ^{F4}
- (6) Tax under this section shall be charged at the rate of [^{F5}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.

[^{F6}[^{F7}(7A) Where—

- (a) there would be no charge to tax under this section, or

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(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)^{F8}.....]

(8)^{F9}.....

(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.

Textual Amendments

F1 Words in s. 87(2) repealed (with effect as mentioned in s. 188(5) of the amending Act) by Finance Act 1996 (c. 8), ss. 188(1), 205, **Sch. 41 Pt. 7**

F2 Words in s. 87(2) repealed (with effect in accordance with s. 188(5) of the amending Act) by Finance Act 1996 (c. 8) s. 188(1), s. 205, {Sch. 41 Pt. 7}

F3 S. 87(4) repealed (with effect as mentioned in s. 192(6) of the amending Act) by Finance Act 1996 (c. 8), ss. 192(1), 205, **Sch. 41 Pt. 7**

F4 S. 87(5) repealed (with effect as mentioned in s. 192(6) of the amending Act) by Finance Act 1996 (c. 8), ss. 192(1), 205, **Sch. 41 Pt. 7**

F5 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)**

F6 S. 87(7A)(7B) inserted by Finance Act 1987 (c. 16), ss. 110, 132, **Sch. 19 Pt. VII**

F7 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)}

F8 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**

F9 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)

C1 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 [^{F10}Special cases.]

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

[^{F11}[^{F12}(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 ^{M1}(transfer to stock exchange nominee), or

(b) section 84(2) or (3) above, [^{F13}, or

(c) Part I of Schedule 19 to the Finance Act 1999 (transfers etc. of units in unit trusts),]

shall be disregarded in construing [^{F14}section 92(1A) and (1B) below].

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^{F15}(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 ^{F14}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 ^{F16}£5;

and in this subsection “stock exchange nominee” means a person designated for the purposes of section 127 of the ^{M2}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.]

^{F17}(1B) An instrument on which stamp duty is not chargeable by virtue of section 42 of the ^{M3}Finance Act 1930 or section 11 of the ^{M4}Finance Act (Northern Ireland) 1954 (transfer between associated bodies corporate) shall be disregarded in construing ^{F14}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 ^{F18}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 ^{F19}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 ^{F20}80A] above;

- (ii) in pursuance of an agreement to transfer securities as regards which section 87 above did not apply by virtue of section ^{F21}88A] below;

- ^{F23}(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 ^{M5}Finance Act 1991.]

^{F24}(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,

the instrument shall be disregarded in construing section 92(1A) and (1B) below.

(1D) Where—

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- (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) ^{F25}
- (3) ^{F25}

[^{F26}[^{F27}(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

F10 S. 88 sidenote substituted by Finance Act 1997 (c. 16) {s. 106(7)}

Status: Point in time view as at 01/12/2003.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 1986, Cross Heading: The principal charge. (See end of Document for details)

- F11** 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)
- F12** 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)
- F13** 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
- F14** 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)
- F15** 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)
- F16** 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)
- F17** 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)
- F18** 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)})
- F19** 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)})
- F20** 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))
- F21** 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))
- F22** 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
- F23** S. 88(1B)(b)(iia) 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))
- F24** 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)})
- F25** 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
- F26** 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)
- F27** 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)

- C2** 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

- M1** 1976 c. 40.
M2 1976 c. 40.
M3 1930 c. 28.
M4 1954 c. 23 (N.I.).
M5 1991 c. 31.

[^{F28}88A Section 87: exceptions for intermediaries.

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

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- (a) B is a member of an EEA exchange, or a recognised foreign exchange, on which securities of that kind are regularly traded;
 - (b) B is an intermediary and is recognised as an intermediary by the exchange in accordance with arrangements approved by the Board; and
 - (c) the agreement is effected on the exchange.
- (2) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or his nominee if—
- (a) B is a member of an EEA exchange or a recognised foreign options exchange;
 - (b) options to buy or sell securities of that kind are regularly traded on that exchange and are listed by or quoted on that exchange;
 - (c) B is an options intermediary and is recognised as an options intermediary by that exchange in accordance with arrangements approved by the Board; and
 - (d) the agreement is effected on an EEA exchange, or a recognised foreign exchange, on which securities of that kind are regularly traded or subsection (3) below applies.
- (3) This subsection applies if—
- (a) the agreement is effected on an EEA exchange, or a recognised foreign options exchange, pursuant to the exercise of a relevant option; and
 - (b) options to buy or sell securities of the kind concerned are regularly traded on that exchange and are listed by or quoted on that 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 an exchange for the purposes of subsection (1) or (2) above if (and only if)—
- (a) it is subject to the rules of the exchange; and
 - (b) it is reported to the exchange in accordance with the rules of the exchange.]

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Textual Amendments

F28 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

Modifications etc. (not altering text)

C3 S. 88A: power to extend (with modifications) conferred (24.7.2002) by Finance Act 2002 (c. 23), s. 117

C4 S. 88A extended (26.7.2002) by S.I. 2002/1975, art. 2

[^{F29} 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 section 839 of the Income and Corporation Taxes Act 1988 ^{M6}.
- (2) In section 88A above and this section—
 - “collective investment scheme” has the meaning given in section [^{F30}235 of the Financial Services and Markets Act 2000];
 - “EEA exchange” means a market which appears on the list drawn up by an EEA State pursuant to Article 16 of European Communities Council Directive No. 93/22/EEC on investment services in the securities field;
 - “EEA State” means a State which 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;
 - [^{F31}“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;]
 - “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;
 - [^{F32}“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.]
- (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.
- (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 subsection (1) or (2) 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.

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- (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 (4) to (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.]

Textual Amendments

- F29** 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
- F30** 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)
- F31** 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)
- F32** 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)

Marginal Citations

- M6** 1988 c. 1.

89 Section 87: exceptions for market makers etc.

F33

Textual Amendments

- F33** 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](#)

[^{F34}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 —
- 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,
 - the agreement is conditional upon the admission of the securities to the Official List of The Stock Exchange,
 - 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
 - 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 —

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- (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,
 - (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

F34 S. 89A inserted by [Finance \(No. 2\) Act 1987 \(c. 51\)](#), s. 100(1)

[^{F35}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 (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.
- (3) The conditions are—
- (a) that the agreement is effected on an EEA exchange or a recognised foreign exchange;
 - (b) that securities of the kind concerned are regularly traded on that exchange; and
 - (c) that chargeable securities are transferred to P or his nominee and Q or his nominee in pursuance of the arrangement.

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- (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 an exchange for the purposes of subsection (3) above if (and only if)—
- (a) it is subject to the rules of the exchange; and
 - (b) it is reported to the exchange in accordance with the rules of the exchange.
- (6) In this section—
- “EEA exchange” has the meaning given in section 88B(2) above;
- “recognised foreign exchange” has the meaning given in section 80B(3) above.
- (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

- F35** 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](#)

Modifications etc. (not altering text)

- C5** S. 89AA: power to extend conferred (24.7.2002) by [Finance Act 2002 \(c. 23\), s. 117](#)
- C6** S. 89AA extended (26.7.2002) by [S.I. 2002/1975, art. 2](#)
- C7** S. 89AA modified (1.1.1999) by [S.I. 1998/3177, arts. 26\(2\), 28\(2\), 30\(2\)](#)

[^{F36}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—
- (a) another person (Q) is to transfer chargeable securities to P or his nominee, and
 - (b) 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,

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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—
- (a) 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
 - (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 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—
- (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.]

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Textual Amendments

F36 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 [^{F37}to or from the managers] under the scheme.
- [^{F38}(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—
- (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).]

[^{F39}(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) [^{F40}.....]

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

 - [^{F41}(a) a non-UK bearer instrument;]
 - (b) [^{F42}.....]

[^{F43}(3A) Section 87 above shall not apply as regards an agreement to transfer chargeable securities constituted by or transferable by means of [^{F44}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 [^{F45}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;
 - [^{F46}(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

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- (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;
 - [^{F47}(b) stamp duty under Schedule 15 to the Finance Act 1999 was not chargeable on the issue of the instrument—
 - (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 [^{F48}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.
- [^{F49}(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 ^{M7}.]
- [^{F50}(7) Section 87 above shall not apply as regards an agreement to transfer securities to —
- (a) a body of persons established for charitable purposes only, or
 - (b) the trustees of a trust so established, or
 - (c) the Trustees of the National Heritage Memorial Fund, or
 - (d) the Historic Buildings and Monuments Commission for England.][^{F51}or

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(e) the National Endowment for Science, Technology and the Arts.]

[^{F52}(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 162A of the Companies Act 1985 (treasury shares) or otherwise).]

[^{F53}(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;
- (b) “recognised stock exchange” has same meaning as it has in the Tax Acts by virtue of section 841 of the Income and Corporation Taxes Act 1988^{M8};
- (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^{M9}Taxation of Chargeable Gains Act 1992;
- (b) “control” shall be construed in accordance with section 416 of the Income and Corporation Taxes Act 1988.]

Textual Amendments

- F37** Words in s. 90(1) substituted (6.2.2000) by Finance Act 1999 (c. 16), s. 122(4), **Sch. 19 para. 11(2)**
- F38** S. 90(1A) inserted (6.2.2000) by Finance Act 1999 (c. 16), s. 122(4), **Sch. 19 para. 11(3)**
- F39** S. 90(1B) inserted (6.2.2000) by Finance Act 1999 (c. 16), s. 122(4), **Sch. 19 para. 11(4)**
- F40** 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)**
- F41** 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)**
- F42** 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**
- F43** 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)
- F44** 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)**
- F45** 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)**
- F46** 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)**
- F47** 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)**
- F48** 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))
- F49** S. 90(5)(6) substituted for s. 90(5) (retrospectively) by Finance Act 1987 (c. 16), s. 56, **Sch. 7 para. 5**
- F50** S. 90(5)(6) added (retrospectively) by Finance Act 1987 (c. 16), s. 56, **Sch. 7 para. 6**
- F51** S. 90(7)(e) and preceding word inserted (2.7.1998) by National Lottery Act 1998 (c. 22), **ss. 24(5), 27(4)(b)**
- F52** 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
- F53** 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)

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Modifications etc. (not altering text)

C8 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 1988 c. 1.

M9 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) ^{F54}

Textual Amendments

F54 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 [^{F55}on or after the relevant day (as defined in section 87(3))] but before the expiry of the period of six years [^{F56}(beginning with that day)] the conditions mentioned in [^{F57}subsections (1A) and (1B) below] have been fulfilled, [^{F58}subsections (2) to (4A) of this section shall apply].

[^{F59}(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.

[^{F60}(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-
^{F61}(1C) shares agreement”)—

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

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(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 169(1) or (1B) of the Companies Act 1985 (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) [^{F62}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 [^{F63}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) ^{F64}

[Interest paid under subsection (2) above shall not constitute income for any tax ^{F65}(4A) purposes.]

(5) ^{F66}

[In this section “the enactments relating to stamp duty” means the Stamp Act 1891 ^{M10} ^{F67}(6) and any enactment which amends or is required to be construed together with that Act.]

[This section shall have effect in relation to a person to whom the chargeable securities ^{F68}(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

- F55** 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\(4\)\(a\)](#)
- F56** 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\(4\)\(b\)](#)
- F57** 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\(3\)\(a\)](#)
- F58** 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\(3\)\(b\)](#)
- F59** 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\(4\)](#)
- F60** 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](#)
- F61** 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](#)
- F62** 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](#)

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- F63** 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)
- F64** 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
- F65** S. 92(4A) inserted (retrospectively) by Finance Act 1987 (c. 16), s. 56, Sch. 7 para. 7
- F66** 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
- F67** 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)
- F68** 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)

- C9** 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

- M10** 1891 c. 39.

Status:

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