

2009 No. 1831

STAMP DUTY

STAMP DUTY RESERVE TAX

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 10) 2009

<i>Made</i> - - - -	<i>9th July 2009</i>
<i>Laid before the House of Commons</i>	<i>9th July 2009</i>
<i>Coming into force</i> - -	<i>3rd August 2009</i>

The Treasury make the following Regulations in exercise of the powers conferred on them by sections 116 and 117 of the Finance Act 1991(a).

Citation and commencement

1.—(1) These Regulations may be cited as the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 10) 2009 and shall come into force on 3rd August 2009.

(2) These Regulations shall have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 3rd August 2009;
- (b) for the purposes of the charge to stamp duty reserve tax—
 - (i) in the case of agreements to transfer traded securities which are not conditional, in relation to agreements made on or after 3rd August 2009;
 - (ii) in the case of agreements to transfer traded securities which are conditional, in relation to agreements where the condition is satisfied on or after that date.

Interpretation

2.—(1) In these Regulations—

“clearing participant” means a member of (a) European Multilateral Clearing Facility NV (EMCF) who as such is permitted by the Rules of EMCF or (b) X-CLEAR who as such is permitted by the Rules of X-CLEAR to clear transactions made on the Facility for a traded security and who may or may not also be a participant in the Facility;

“client” means a person who gives instructions to a non-clearing firm for traded securities to be sold on the Facility;

(a) 1991 c. 31. Section 116(4) was amended by paragraph 5 of Schedule 20 to the Financial Services and Markets Act 2000 (c. 8) and by paragraph 7 of Schedule 21 to the Finance Act 2007 (c. 11).

“EMCF” means European Multilateral Clearing Facility NV, a company which is a recognised clearing house under the Financial Services and Markets Act 2000(a);

“X-CLEAR” means SIX X-CLEAR AG, a company which is a recognised clearing house under the Financial Services and Markets Act 2000;

“the Facility” means the multilateral trading facility operated by NASDAQ OMX Europe Limited, a company which is authorised to operate a multilateral trading facility for the purposes of Part IV of the Financial Services and Markets Act 2000;

“nominee” means a person whose business is or includes holding traded securities as a nominee for EMCF or X-CLEAR acting in its capacity as a person providing clearing services in connection with a transaction made on the Facility, or as a nominee for a clearing participant (as the case may be);

“non-clearing firm” means a participant in the Facility other than a clearing participant;

“traded securities” means stocks and shares which are issued or raised by a company but does not include stocks and shares issued by a company not incorporated in the United Kingdom unless—

- (a) the stocks and shares are registered in a register kept in the United Kingdom by or on behalf of the company; or
- (b) in the case of shares, they are paired, within the meaning of section 99(6A) of the Finance Act 1986(b), with shares issued by a company incorporated in the United Kingdom.

Prescription of recognised investment exchanges and recognised clearing houses

3. For the purpose of sections 116 and 117 of the Finance Act 1991—

- (a) NASDAQ OMX Europe Limited (“the Facility”) is prescribed as a recognised investment exchange; and
- (b) European Multilateral Clearing Facility NV is prescribed as a recognised clearing house; and
- (c) SIX X-CLEAR AG is prescribed as a recognised clearing house.

Prescribed circumstances for the purposes of sections 116 and 117

4.—(1) In the circumstances prescribed in this regulation, a charge to stamp duty or stamp duty reserve tax shall be treated as not arising.

(2) The circumstances prescribed are where, in connection with a transaction made on the Facility conditions A and B are met.

(3) Condition A is that traded securities of a particular kind are issued or transferred, or agreed to be issued or transferred, from—

- (a) a clearing participant or a nominee of a clearing participant to another clearing participant or nominee,
- (b) a non-clearing firm or its client to a clearing participant or a nominee of a clearing participant,
- (c) a clearing participant or a nominee of a clearing participant to EMCF or X-CLEAR, or to a nominee of either EMCF or X-CLEAR.
- (d) a person other than a clearing participant to EMCF or X-CLEAR, or to a nominee of EMCF or X-CLEAR, as a result of a failure by a clearing participant to fulfil his obligations in respect of the transaction concerned to transfer traded securities to EMCF or X-CLEAR, or to a nominee of either EMCF or X-CLEAR, or

(a) 2000 c. 8.

(b) 1986 c. 41. Subsections (3) to (6A) was amended by section 113(2) of the Finance Act 1990 (c.29). The whole of Part 4 of the 1986 Act is to be repealed from a date to be appointed (see sections 110 and 111(1) of the 1990 Act).

- (e) X-CLEAR or EMCF, or a nominee of either X-CLEAR or EMCF to a clearing participant or a nominee of a clearing participant.
- (f) X-CLEAR or a nominee of that clearing house to EMCF or a nominee of that clearing house.
- (g) EMCF or a nominee of that clearing house to X-CLEAR or a nominee of that clearing house.

(4) Condition B is that the person to whom those securities are agreed to be transferred under any of the agreements specified in paragraph (3) (“the relevant agreement”) is required on receipt of those securities to transfer traded securities under a matching agreement to another person or, in the case of an agreement falling within paragraph (3)(d), would have been so required if the failure referred to in that paragraph had not occurred.

(5) In paragraph (4)—

- (a) a “matching agreement” means an agreement under which—
 - (i) the traded securities agreed to be transferred are of the same kind as the traded securities agreed to be transferred under the relevant agreement, and
 - (ii) the number and transfer price of the traded securities agreed to be transferred are identical to the number and transfer price of the traded securities agreed to be transferred under the relevant agreement;
- (b) references to X-CLEAR or EMCF are references to that clearing house in its capacity as a person providing clearing services in connection with a transaction made on the Facility;
- (c) references to a clearing participant are references to a clearing participant in its capacity as such.

Consequential provision

5.—(1) Traded securities which are the subject of an agreement specified in regulation 4(3) shall be dealt with by a clearing participant who is party to the agreement in a separate designated account, and not otherwise.

(2) In paragraph (1) “designated account” means an account designated by X-CLEAR or EMCF for a clearing participant in connection with the traded securities concerned.

Dave Watts
Frank Roy

9th July 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations exempt from stamp duty and stamp duty reserve tax (“SDRT”) certain transfers of, or agreements to transfer traded securities made in the course of trading in those securities on the multilateral trading facility operated by NASDAQ OMX Europe Limited (“the Facility”). The transfers and agreements exempted are those involving SIX X-CLEAR AG (“X-CLEAR”) and/or European Multilateral Clearing Facility NV (“EMCF”) (and nominees of either clearing house), through whom transactions on the Facility are cleared, or clearing participants in SIX X-CLEAR AG or European Multilateral Clearing Facility NV (and their nominees). These Regulations also exempt transactions on the Facility between SIX X-CLEAR AG and European Multilateral Clearing Facility NV.

Regulation 1 provides for citation, commencement and effect and regulation 2 contains definitions.

Regulation 3 prescribes the facility as a recognised investment exchange and SIX X-CLEAR AG and European Multilateral Clearing Facility NV as recognised clearing houses for the purpose of the exemption.

Regulation 4 prescribes the circumstances in which stamp duty and SDRT will not be charged.

Regulation 5 makes consequential provisions requiring traded securities which are agreed to be transferred in the prescribed circumstances to be dealt with in a separate designated account.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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