

2010 No. 1824

STAMP DUTY

STAMP DUTY RESERVE TAX

**The Stamp Duty and Stamp Duty Reserve Tax (Investment
Exchanges and Clearing Houses) (Over the Counter)
Regulations 2010**

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| <i>Made</i> - - - - | <i>15th July 2010</i> |
| <i>Laid before the House of Commons</i> | <i>19th July 2010</i> |
| <i>Coming into force</i> - - | <i>10th August 2010</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, commencement and effect

1.—(1) These Regulations may be cited as the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) (Over the Counter) Regulations 2010 and come into force on 10th August 2010.

(2) These Regulations have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 10th August 2010;
- (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 10th August 2010;
 - (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. In these Regulations—

“clearing participant” means a member of LCH.Clearnet Limited who as such is permitted by the Rules of LCH.Clearnet Limited to clear transactions made over the counter for a traded security;

“client” means a person who gives instructions to a non-clearing firm for traded securities to be sold or transferred over the counter;

(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). Sections 116(1)(b) and 117(1)(b) were amended by section 65 of the Finance Act 2010 (c. 13).

“nominee” means a person whose business is or includes holding traded securities as a nominee for LCH.Clearnet Limited acting in its capacity as a person providing clearing services in connection with a transaction made over the counter, or as a nominee for a clearing participant, non-clearing firm or client;

“non-clearing firm” means any person who uses a clearing participant for the purpose of clearing over the counter transactions in traded securities through LCH.Clearnet Limited;

“over the counter” means a transaction in traded securities made other than on a recognised investment exchange(a);

“traded securities” means stocks and shares which are issued or raised by a body corporate but does not include stocks and shares issued or raised by a body corporate 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 body corporate; 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 body corporate incorporated in the United Kingdom.

Prescription of recognised clearing house

3. For the purposes of sections 116 and 117 of the Finance Act 1991 LCH.Clearnet Limited is prescribed as a recognised clearing house (c).

Prescribed circumstances for the purposes of sections 116 and 117

4.—(1) In the circumstances prescribed by paragraph (2) below, the charges to stamp duty and stamp duty reserve tax shall be treated as not arising.

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

(3) Condition A is that traded securities are transferred, or agreed to be transferred, from—

- (a) a clearing participant or its nominee to another clearing participant or its nominee;
- (b) a non-clearing firm or its nominee or client to a clearing participant or its nominee;
- (c) a clearing participant or its nominee to LCH.Clearnet Limited or its nominee;
- (d) a person other than a clearing participant to LCH.Clearnet Limited or its nominee, as a result of a failure by a clearing participant to fulfil its obligations in respect of the transaction concerned to transfer traded securities to LCH.Clearnet Limited or its nominee; or
- (e) LCH.Clearnet Limited or its nominee to a clearing participant or its nominee.

(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) above (“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 sub-paragraph had not occurred.

(5) Condition C is that traded securities which are the subject of a relevant agreement shall be dealt with by a clearing participant, who is a party to the relevant agreement, in a separate designated account.

(6) In this regulation—

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- (a) A recognised investment exchange is an investment exchange within the meaning of sections 116(4)(b) and 117(3) of the Finance Act 1991
 - (b) 1986 c. 41. Section 99(6A) was inserted by section 144 of the Finance Act 1988 (c. 39), and was amended by section 113(2) of the Finance Act 1990 (c. 29).
 - (c) LCH.Clearnet Limited is a recognised clearing house within the meaning of the Financial Services and Markets Act 2000 and sections 116(4)(c) and 117(3) of the Finance Act 1991.

- (a) “designated account” means an account designated by LCH.Clearnet Limited for a clearing participant, in connection with the traded securities concerned;
- (b) “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 in total identical to the number and transfer price of the traded securities agreed to be transferred under the relevant agreement.

Brooks Newmark
Michael Fabricant

15th July 2010

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 over the counter. Over the counter transactions are those that may have been made by two persons directly (whether or not through brokers) or arranged on behalf of the buyer and seller of the traded securities (whether or not on an anonymous basis). An over the counter transaction will not have been made on a recognised investment exchange and will not have been made in accordance with the rules of any recognised investment exchange.

The transfers and agreements exempted by the Regulations are those involving LCH.Clearnet Limited and its nominees, through whom transactions are cleared, or clearing participants in LCH.Clearnet Limited (and their nominees).

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

Regulation 3 prescribes LCH.Clearnet Limited as a recognised clearing house for the purpose of the exemption.

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

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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