

2010 No. 1897

STAMP DUTY

STAMP DUTY RESERVE TAX

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 4) 2010

<i>Made</i> - - - -	<i>22nd July 2010</i>
<i>Laid before the House of Commons</i>	<i>26th July 2010</i>
<i>Coming into force</i> - -	<i>17th August 2010</i>

The Treasury make the following Regulations in exercise of the powers conferred 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) Regulations (No. 4) 2010 and come into force on 17th 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 17th 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 17th 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—

- “Frankfurt Stock Exchange” means a regulated market operated by Deutsche Borse AG(b);
- “Open Market MTF” means a multilateral trading facility operated by Deutsche Borse AG;

(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).

(b) Deutsche Borse AG is permitted to operate a regulated market and multilateral trading facility under Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (O.J. L 145, 30.4.2004, p. 1).

“clearing participant” means a member of Eurex Clearing who as such is permitted by the Rules of Eurex to clear transactions made on the Deutsche Borse AG exchange for a traded security and who may or may not also be a participant on the Deutsche Borse AG exchange;

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

“Deutsche Borse AG exchange” means either the Frankfurt Stock Exchange or the Open Market MTF.

“Eurex Clearing” means Eurex Clearing AG(a);

“nominee” means a person whose business is or includes holding traded securities as a nominee for Eurex Clearing acting in its capacity as a person providing clearing services in connection with a transaction made on the Deutsche Borse AG exchange, or as a nominee for a clearing participant;

“non-clearing firm” means a participant on the Deutsche Borse AG exchange other than a clearing participant;

“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 investment exchanges and recognised clearing houses

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

- (a) the Frankfurt Stock Exchange is prescribed as a recognised investment exchange;
- (b) Open Market MTF is prescribed as a recognised investment exchange;
- (c) Eurex is prescribed as a recognised clearing house.

Prescribed circumstances for the purposes of sections 116 and 117

4.—(1) In the circumstances prescribed by paragraph (2), 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 on the Deutsche Borse AG exchange, 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 client, or nominee of a non-clearing firm or its client, to a clearing participant or its nominee;
- (c) a clearing participant or its nominee to Eurex Clearing or to its nominee;
- (d) a person other than a clearing participant to Eurex Clearing or to 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 Eurex Clearing or to its nominee;
- (e) Eurex Clearing or its nominee to a clearing participant or its nominee;
- (f) a clearing participant or its nominee to a non-clearing firm.

(a) Eurex Clearing 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.

(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).

(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) 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—

- (a) “designated account” means an account designated by Eurex Clearing, for a clearing participant, in connection with the traded securities concerned;
- (b) 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.

Brooks Newmark
Michael Fabricant

22nd 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 on the Frankfurt Stock Exchange, a regulated market operated by Deutsche Borse AG, and the Open Market, a multilateral trading facility operated by Deutsche Borse AG (“the Deutsche Borse AG exchanges”). The transfers and agreements exempted are those involving Eurex Clearing AG (“Eurex Clearing”) and nominees of that clearing house, (through whom transactions on the Deutsche Borse AG exchanges are cleared).

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

Regulation 3 prescribes the Frankfurt Stock Exchange and the Open Market as recognised investment exchanges, and Eurex Clearing 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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