

EXPLANATORY MEMORANDUM TO
THE STAMP DUTY AND STAMP DUTY RESERVE TAX (INVESTMENT
EXCHANGES AND CLEARING HOUSES) (REVOCATION) REGULATIONS 2011

2011 No. 665

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These regulations revoke regulations that remove multiple charges to stamp duty and stamp duty reserve tax (“SDRT”) from transactions made on a regulated market, a multilateral trading facility or over the counter and which are transferred through certain recognised clearing houses (also known as central counterparties), their members and their nominees.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 The relief provided by the regulations to be revoked is to be provided by 5 new sets of regulations to come into force on the same day as these regulations. The new regulations provide relief to Eurex Clearing AG, European Multilateral Clearing Facility N.V., European Central Counterparty Limited, LCH.Clearnet Limited and SIX X-CLEAR AG and to their members and nominees, when clearing transactions, to ensure that stamp charges are paid only once by the ultimate purchaser.

4. **Legislative Context**

- 4.1 When shares in UK companies are traded on a regulated market, a multilateral trading facility or over the counter, the use of a central counterparty (CCP) to clear and settle the transactions will involve a number of transfers of those shares, each of which is potentially chargeable to stamp duty or SDRT.
- 4.2 Sections 116 and 117 of the Finance Act 1991 permit the Treasury to make regulations to remove such multiple charges in respect of what is essentially a single sale and purchase. The new regulations will ensure that multiple charges to stamp duty or SDRT will not arise when shares are transferred between non-clearing and clearing members of the CCPs and between prescribed recognised clearing houses.

5. **Territorial Extent and Application**

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 When the new regulations come into force, most of the current regulations will be unnecessary. These regulations therefore revoke those existing regulations.

7.2 The existing regulations, revoked by these regulations, apply by reference to the exchanges themselves - or separately to over the counter transactions – and therefore have to be revised every time an exchange appoints a new CCP.

7.3 The new regulations provide a more efficient method of removing the multiple charges as they apply by reference to the CCP itself, regardless of the exchange for which it provides services.

- *Consolidation*

7.4 Not applicable.

8. Consultation outcome

8.1 This instrument followed a request from the industry for improvements in the method of removing the multiple charges. The wording of the new regulations has been agreed, following consultation, with representatives of the clearing houses that carry out these services and of the regulated markets and multilateral trading facilities for which these services are provided. The exchanges have agreed that they are content for their current regulations to be revoked on the coming into force of the new CCP based regulations, as relief will continue to be provided.

9. Guidance

9.1 No HM Revenue & Customs guidance or other form of publicity is regarded as necessary beyond the publication of the new instrument.

10. Impact

10.1 There will be savings to the CCPs and platforms as the new regulations for the CCPs, laid at the same time as these regulations, will ensure that fewer amendments to the regulations are required and that newly launched exchanges will, generally, no longer require specific regulations.

10.2 The new approach to the regulations will also provide cost savings for the public sector for the same reasons.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 HM Revenue & Customs will monitor the practical application of the new regulations.

13. Contact

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