EXPLANATORY MEMORANDUM TO

THE STAMP DUTY AND STAMP DUTY RESERVE TAX (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 515

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of HM Treasury and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 Stamp Duty and Stamp Duty Reserve Tax are transaction taxes charged on the transfer of United Kingdom securities. A very large proportion of trades on the stock market depend on reliefs from those taxes. The reliefs are necessary for maintaining market liquidity. Those reliefs currently rely on European Union and European Economic Area-related references. This instrument will change those references to ensure that the reliefs continue to cover the United Kingdom and Gibraltar if the United Kingdom leaves the European Union without a negotiated deal.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Mel Stride MP (Financial Secretary to the Treasury) has made the following statement regarding Human Rights:

"In my view the provisions of the Stamp Duty and Stamp Duty Reserve Tax (Amendment) (EU Exit) Regulations 2019 are compatible with the Convention rights".

6. Legislative Context

6.1 Section 80A Finance Act 1986 provides that no Stamp Duty is payable on an instrument which transfers stock or marketable securities to an intermediary provided that the conditions for the relief are met.

6.2 Section 88A Finance Act 1986 provides that no Stamp Duty Reserve Tax is chargeable on an agreement to transfer securities to an intermediary provided that the conditions for the relief are met.

6.3 Section 80C Finance Act 1986 removes the Stamp Duty charge for transfers pursuant to stock lending, repurchase and collateral arrangements provided that the conditions for the relief are met.

6.4 Section 89AA Finance Act 1986 removes the Stamp Duty Reserve Tax charge for transfers pursuant to stock lending, repurchase and collateral arrangements provided that the conditions for the relief are met.

6.5 In relation to collective investment schemes, regulation 3 of the Stamp Duty and Stamp Duty Reserve Tax (Exchange Traded Funds) (Exemption) Regulations 2014 (S.I. 2014/911) provides that Stamp Duty Reserve Tax shall not be chargeable on a transfer or an agreement to transfer units in a fund as defined in regulation 5. Regulation 4 provides that Stamp Duty shall not be chargeable on an instrument which transfers units in a fund as defined in regulation 5.

7. Policy background

What is being done and why?

7.1 Stamp Duty and Stamp Duty Reserve Tax are transaction taxes charged on the transfer of United Kingdom securities. Stamp Duty applies to paper transactions. Stamp Duty Reserve Tax applies to electronic transactions.

7.2 Intermediary relief maintains market liquidity by removing the charge on transfers involving authorised brokers and market makers. Stock lending relief also supports liquidity by removing the charge for transfers which are part of stock lending and repurchase arrangements. The Exchange Traded Funds exemption was introduced to make the United Kingdom more attractive as a domicile for certain collective investment schemes by exempting from Stamp Duty or Stamp Duty Reserve Tax a transfer of units in such a fund.

7.3 The reliefs as currently drafted rely on a number of European Union or European Economic Area-related terms and definitions that do not specifically refer to the United Kingdom or Gibraltar. This instrument will amend those references to ensure that the reliefs continue to cover the United Kingdom and Gibraltar and will provide certainty to stakeholders that the reliefs will continue working in the same way if the United Kingdom leaves the European Union without a negotiated deal. This certainty is important as Stamp Duty and Stamp Duty Reserve Tax are paid within a short period of a taxable event happening, the transactions impacted are highly sensitive to tax and the reliefs are important to maintaining market liquidity.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it amends references to ensure that the reliefs continue to apply as intended if the United Kingdom leaves the European Union without a negotiated deal.

9. Consolidation

9.1 There are no plans to consolidate the legislation given the changes are consequential upon the United Kingdom's withdrawal from the European Union.

10. Consultation outcome

10.1 This instrument makes minor changes designed to ensure that the reliefs continue to apply as intended if the United Kingdom leaves the European Union without a negotiated deal. Therefore it is considered that no formal consultation is required. Informal consultation has indicated that stakeholders will welcome the certainty this instrument provides as the reliefs are widely used.

11. Guidance

11.1 All relevant notices and guidance will be updated as appropriate to coincide with the implementation of these changes.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for this final decision on what action to take to assist small businesses is that the instrument does not impose new obligations on them.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that HMRC will keep this instrument under review to ensure that it meets the policy objectives set out in paragraph 7 above.

14.2 The regulation does not include a statutory review clause. None is required under section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015 (c. 26) because the powers by which this instrument is made is being exercised so as to make or amend provisions imposing, abolishing, or varying any tax duty, levy, or other charge or provisions in connection with such provisions.

15. Contact

15.1 Stephen Roberts at HM Revenue and Customs Telephone: 03000 585 455 or email: Stephen.roberts@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Morris Graham, Deputy Director for Stamp Taxes Policy at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mel Stride MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.