

2022 No. 102

STAMP DUTY

STAMP DUTY RESERVE TAX

**The Stamp Duty and Stamp Duty Reserve Tax (LCH SA)
Regulations 2022**

<i>Made</i> - - - -	<i>3rd February 2022</i>
<i>Laid before the House of Commons</i>	<i>7th February 2022</i>
<i>Coming into force</i> - -	<i>28th February 2022</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 (LCH SA) Regulations 2022 and come into force on 28th February 2022.

(2) These Regulations have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 28th February 2022;
- (b) for the purposes of the charge to stamp duty reserve tax—
 - (i) in the case of agreements to transfer traded securities or options which are not conditional, in relation to agreements made on or after 28th February 2022;
 - (ii) in the case of agreements to transfer traded securities or options which are conditional, in relation to agreements where the condition is satisfied on or after 28th February 2022.

Interpretation

2. In these Regulations—

“clearing member client contract” has the same meaning as in section 155 of the Companies Act 1989 (market contracts)(b);

“clearing participant” means a member of LCH SA who as such is permitted by the rules of LCH SA to clear facility transactions and/or over the counter transactions;

(a) 1991 c. 31. Section 116 was amended by paragraph 7 of Schedule 21 to the Finance Act 2007 (c. 11), and by S.I. 2013/504, 2017/1064, 2019/662, 2019/689 and 2019/818. Section 117 was amended by S.I. 2013/504 and 2017/1064.
(b) 1989 c. 40. Section 155 was amended by S.I. 1991/880, 1998/1748, 2009/853, 2013/504, 2013/1908, 2016/481 and 2017/1064.

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

“default rules”, “defaulting” and “non-defaulting” have the same meaning as in section 188 of the Companies Act 1989(a);

“facility transaction” means a transaction in traded securities or options that is made on or reported to a recognised investment exchange(b);

“nominee” means, save in relation to a non-clearing firm or its client (regulation 4(4)(b) and (e)), a person whose business is or includes holding traded securities or options as a nominee for LCH SA, or another prescribed(c) recognised clearing house or prescribed third country central counterparty(d) acting in its capacity as a person providing clearing services in connection with an over the counter transaction or a facility transaction, or as a nominee for a clearing participant;

“non-clearing firm” means a person other than a clearing participant who has an agreement with a clearing participant to clear over the counter transactions or facility transactions or both;

“option” means an option to buy or sell traded securities;

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

“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(e), with shares issued by a body corporate incorporated in the United Kingdom.

Prescription of LCH SA

3. LCH SA(f) is a prescribed relevant entity for the purposes of sections 116 and 117 of the Finance Act 1991.

Prescribed circumstances for the purposes of sections 116 and 117

4.—(1) In the circumstances prescribed by paragraphs (2) and (3), the charges to stamp duty and stamp duty reserve tax shall be treated as not arising.

(2) The circumstances prescribed by this paragraph are that, in connection with a facility transaction or an over the counter transaction—

- (a) a clearing member client contract entered into by a defaulting clearing participant (“DCP”) is transferred from the DCP to a non-defaulting clearing participant in accordance with the default rules of LCH SA; and

(a) Section 188 was amended by S.I. 2009/853, 2013/504, 2013/1908, 2017/1064 and 2017/1247.

(b) “Recognised investment exchange” in section 116(4)(b)(ii) of the Finance Act 1991 has the same meaning as in section 285 of the Financial Services and Markets Act 2000 (c. 8). Section 285 was amended by section 28 of the Financial Services Act 2012 (c. 21), and by S.I. 2013/504, 2017/1064, 2018/135, 2018/1184 and 2019/662.

(c) “Prescribed” means prescribed by regulations (see section 116(4)(a) of the Finance Act 1991).

(d) “Recognised clearing house” and “third country central counterparty” in section 116(4)(b)(ii) of the Finance Act 1991 have the same meanings as in section 285 of the Financial Services and Markets Act 2000.

(e) 1986 c. 41; section 99(6A) was inserted by section 144 of the Finance Act 1988 (c. 39) and amended by section 113 of the Finance Act 1990 (c. 29).

(f) LCH SA is a “relevant entity” for the purposes of sections 116 and 117 of the Finance Act 1991 as it is a third country central counterparty (“CCP”) within the meaning of section 116(4)(b)(ii); the list of CCPs recognised by the Bank of England under the temporary recognition regime established by regulation 17 of S.I. 2018/1184 is available at the following web page: <https://www.bankofengland.co.uk/eu-withdrawal/information-on-the-effect-of-the-uks-withdrawal-from-the-eu-on-fmi-supervision>.

(b) the clearing member client contract does not represent the end transaction in the clearing of that contract either before or after the transfer.

(3) The circumstances prescribed by this paragraph are that, in connection with a facility transaction or an over the counter transaction (excluding transactions that come within section 80C or 89AA(a) of the Finance Act 1986 (repurchases and stock lending)), conditions A, B and C are met.

(4) Condition A is that traded securities or options 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 LCH SA or its nominee;
- (d) a person other than a clearing participant to LCH SA 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 or options to LCH SA, or its nominee;
- (e) a person other than a clearing participant to a clearing participant or its nominee as a result of a failure by a non-clearing firm or its client, or nominee of a non-clearing firm or its client or by another clearing participant or its nominee to fulfil its obligations in respect of the transaction concerned to transfer traded securities or options to that clearing participant or its nominee;
- (f) a prescribed recognised clearing house or its nominee to LCH SA or its nominee;
- (g) a prescribed third country central counterparty or its nominee to LCH SA or its nominee;
or
- (h) LCH SA or its nominee to a clearing participant or its nominee.

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

(6) Condition C is that where traded securities or options which are the subject of the relevant agreement are received by a clearing participant, the agreement must be identified by the clearing participant as an agreement that has been made solely in relation to the clearing of those traded securities or options on behalf of a third party.

(7) In this regulation “matching agreement” means an agreement under which—

- (a) the traded securities or options agreed to be transferred are of the same kind as the traded securities or options agreed to be transferred under the relevant agreement; and
- (b) the number and transfer price of the traded securities or options agreed to be transferred are in total identical to the number and transfer price of the traded securities or options agreed to be transferred under the relevant agreement.

Michael Tomlinson
Alan Mak

3rd February 2022

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Section 80C was inserted by section 98 of the Finance Act 1997 (c. 16); it was amended by paragraph 19 of Schedule 14 to the Finance Act 1999 (c. 16), paragraph 5 of Schedule 21 to the Finance Act 2007, and S.I. 2019/515. Section 89AA was inserted by section 103 of the Finance Act 1997; it was amended by paragraph 6 of Schedule 21 to the Finance Act 2007, and S.I. 2008/3236 and 2019/515.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give relief from stamp duty and stamp duty reserve tax (“SDRT”) to certain transfers of, or agreements to transfer, traded securities or options made in the course of trading in those traded securities or options either on a facility or over the counter. The transfers and agreements eligible for relief are those involving LCH SA and its nominees (through whom transactions on the facility are cleared), or clearing participants of LCH SA and its nominees. LCH SA is a third country central counterparty which is authorised to operate in the UK by the Bank of England under the temporary recognition scheme established in regulation 17 of the Central Counterparties (Amendment, etc, and Transitional Provision) (EU Exit) Regulations 2018 (S.I. 2018/1184).

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

Regulation 3 prescribes LCH SA as a “relevant entity” (as it is a third country central counterparty) for the purpose of the relief.

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

A Tax Information and Impact Note covering this instrument will be published at: <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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