



# Finance Act 1997

## 1997 CHAPTER 16

### PART VII

#### STAMP DUTY AND STAMP DUTY RESERVE TAX

##### *Stamp duty reserve tax*

#### **100 Mergers of authorised unit trusts**

- (1) Section 87 of the Finance Act 1986 shall not apply as regards an agreement to transfer securities which constitute property which is subject to the trusts of an authorised unit trust (“the target trust”) to the trustees of another authorised unit trust (“the acquiring trust”) if the conditions set out in subsection (2) below are fulfilled.
- (2) Those conditions are that—
  - (a) the agreement forms part of an arrangement under which the whole of the available property of the target trust is transferred to the trustees of the acquiring trust;
  - (b) under the arrangement all the units in the target trust are extinguished;
  - (c) the consideration under the arrangement consists of or includes the issue of units (“the consideration units”) in the acquiring trust to the persons who held the extinguished units;
  - (d) the consideration units are issued to those persons in proportion to their holdings of the extinguished units; and
  - (e) the consideration under the arrangement does not include anything else, other than the assumption or discharge by the trustees of the acquiring trust of liabilities of the trustees of the target trust.
- (3) Where—
  - (a) stamp duty is not chargeable on an instrument by virtue of section 95(1) above, or
  - (b) section 87 of the Finance Act 1986 does not apply as regards an agreement by virtue of subsection (1) above,

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section 87 of the Finance Act 1986 shall not apply as regards an agreement, or a deemed agreement, to transfer a unit to the managers of the target trust which is made in order that the unit may be extinguished under the arrangement mentioned in section 95(2)(a) or, as the case may be, subsection (2)(a) above.

(4) In this section—

“authorised unit trust” means a unit trust scheme in the case of which an order under section 78 of the Financial Services Act 1986 is in force;

“the whole of the available property of the target trust” means the whole of the property subject to the trusts of the target trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the target trust;

“unit” and “unit trust scheme” have the same meanings as in Part VII of the Finance Act 1946.

(5) Each of the parts of an umbrella scheme (and not the scheme as a whole) shall be regarded for the purposes of this section as an authorised unit trust; and in this section “umbrella scheme” has the same meaning as in section 468 of the Taxes Act 1988 and references to parts of an umbrella scheme shall be construed in accordance with that section.

(6) This section applies—

- (a) to an agreement which is not conditional, if the agreement is made on or after the day on which this Act is passed but before 1st July 1999; and
- (b) to a conditional agreement, if the condition is satisfied on or after the day on which this Act is passed but before 1st July 1999.

## **101 Direction to hold trust property on other trusts**

(1) Where an agreement to transfer securities constituting property subject to the trusts of an authorised unit trust (“the absorbed trust”) is made by means of a direction by the holders of units in the absorbed trust (“the sellers”) to the trustees of another trust (“the continuing trust”) to hold the whole of the available property of the absorbed trust on the trusts of the continuing trust, section 87 of the Finance Act 1986 shall not apply as regards the agreement if the conditions set out in subsection (2) below are fulfilled.

(2) Those conditions are that—

- (a) the trustees of the absorbed trust are the same persons as the trustees of the continuing trust;
- (b) the agreement forms part of an arrangement under which all the units in the absorbed trust are extinguished;
- (c) the consideration for the direction by the sellers consists of or includes the issue of units (“the consideration units”) in the continuing trust to the sellers;
- (d) the consideration units are issued to the sellers in proportion to their holdings of the extinguished units; and
- (e) the consideration for the direction by the sellers does not include anything else, other than the assumption or discharge by the trustees of the continuing trust of liabilities of the trustees of the absorbed trust.

(3) Where section 87 of the Finance Act 1986 does not apply as regards an agreement by virtue of subsection (1) above, that section shall not apply as regards an agreement, or a deemed agreement, to transfer a unit to the managers of the absorbed trust which

is made in order that the unit may be extinguished under the arrangement mentioned in subsection (2)(b) above.

(4) In this section—

“authorised unit trust” and “unit” have the same meanings as in section 100 above (and section 100(5) applies for the purposes of this section as it applies for the purposes of section 100);

“the whole of the available property of the absorbed trust” means the whole of the property subject to the trusts of the absorbed trust, other than any property which is retained for the purpose of discharging liabilities of the trustees of the absorbed trust.

(5) This section applies—

- (a) to an agreement which is not conditional, if the agreement is made on or after the day on which this Act is passed but before 1st July 1999; and
- (b) to a conditional agreement, if the condition is satisfied on or after the day on which this Act is passed but before 1st July 1999.

## **102 Relief for intermediaries**

(1) After section 88 of the Finance Act 1986 there shall be inserted the following sections—

### **“88A Section 87: exceptions for intermediaries**

- (1) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or his nominee if—
  - (a) B is a member of an EEA exchange, or a recognised foreign exchange, on which securities of that kind are regularly traded;
  - (b) B is an intermediary and is recognised as an intermediary by the exchange in accordance with arrangements approved by the Board; and
  - (c) the agreement is effected on the exchange.
- (2) Section 87 above shall not apply as regards an agreement to transfer securities of a particular kind to B or his nominee if—
  - (a) B is a member of an EEA exchange or a recognised foreign options exchange;
  - (b) options to buy or sell securities of that kind are regularly traded on that exchange and are listed by or quoted on that exchange;
  - (c) B is an options intermediary and is recognised as an options intermediary by that exchange in accordance with arrangements approved by the Board; and
  - (d) the agreement is effected on an EEA exchange, or a recognised foreign exchange, on which securities of that kind are regularly traded or subsection (3) below applies.
- (3) This subsection applies if—
  - (a) the agreement is effected on an EEA exchange, or a recognised foreign options exchange, pursuant to the exercise of a relevant option; and

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- (b) options to buy or sell securities of the kind concerned are regularly traded on that exchange and are listed by or quoted on that exchange.
- (4) For the purposes of this section—
- (a) an intermediary is a person who carries on a bona fide business of dealing in chargeable securities and does not carry on an excluded business; and
  - (b) an options intermediary is a person who carries on a bona fide business of dealing in quoted or listed options to buy or sell chargeable securities and does not carry on an excluded business.
- (5) The excluded businesses are the following—
- (a) any business which consists wholly or mainly in the making or managing of investments;
  - (b) any business which consists wholly or mainly in, or is carried on wholly or mainly for the purpose of, providing services to persons who are connected with the person carrying on the business;
  - (c) any business which consists in insurance business;
  - (d) any business which consists in managing or acting as trustee in relation to a pension scheme or which is carried on by the manager or trustee of such a scheme in connection with or for the purposes of the scheme;
  - (e) any business which consists in operating or acting as trustee in relation to a collective investment scheme or is carried on by the operator or trustee of such a scheme in connection with or for the purposes of the scheme.
- (6) An agreement is effected on an exchange for the purposes of subsection (1) or (2) above if (and only if)—
- (a) it is subject to the rules of the exchange; and
  - (b) it is reported to the exchange in accordance with the rules of the exchange.

### **88B Intermediaries: supplementary**

- (1) For the purposes of section 88A above the question whether a person is connected with another shall be determined in accordance with the provisions of section 839 of the Income and Corporation Taxes Act 1988.

- (2) In section 88A above and this section—

“collective investment scheme” has the meaning given in section 75 of the Financial Services Act 1986;

“EEA exchange” means a market which appears on the list drawn up by an EEA State pursuant to Article 16 of European Communities Council Directive No. [93/22/EEC](#) on investment services in the securities field;

“EEA State” means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on the 2nd May 1992 as adjusted by the Protocol signed at Brussels on the 17th March 1993;

“insurance business” means long term business or general business as defined in section 1 of the Insurance Companies Act 1982;

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“quoted or listed options” means options which are quoted on or listed by an EEA exchange or a recognised foreign options exchange;

“recognised foreign exchange” and “recognised foreign options exchange” have the meanings given, respectively, by subsections (3) and (4) of section 80B above;

“trustee” and “the operator” shall, in relation to a collective investment scheme, be construed in accordance with section 75(8) of the Financial Services Act 1986.

- (3) In section 88A above “the exercise of a relevant option” means—
- (a) the exercise by B of an option to buy securities; or
  - (b) the exercise of an option binding B to buy securities.
- (4) The Treasury may by regulations provide that section 88A above shall not have effect in relation to kinds of agreement specified in the regulations.
- (5) The Treasury may by regulations provide that if—
- (a) an agreement falls within subsection (1) or (2) of section 88A above, and
  - (b) section 87 above would, apart from section 88A, apply to the agreement,
- section 87 shall apply to the agreement but with the substitution of a rate of tax not exceeding 0.1 per cent. for the rate specified in subsection (6) of that section.
- (6) The Treasury may by regulations change the meaning of “intermediary” or “options intermediary” for the purposes of section 88A above by amending subsection (4) or (5) of that section (as it has effect for the time being).
- (7) The power to make regulations under subsections (4) to (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) Section 89 of that Act (exceptions for market makers etc.) shall be omitted.
- (3) In section 88(1B)(b)(ii) of that Act (which prevents repayment or cancellation of stamp duty reserve tax on certain agreements to transfer property consisting of chargeable securities which were acquired in pursuance of an agreement on which tax was not chargeable by virtue of section 89) for “89” there shall be substituted “88A”.
- (4) Subsections (1) and (2) above apply to an agreement to transfer securities—
- (a) in the case of an agreement which is not conditional, if the agreement is made on or after the commencement day; and
  - (b) in the case of a conditional agreement, if the condition is satisfied on or after the commencement day.
- (5) Subsection (3) above applies in relation to property consisting of chargeable securities if the securities were acquired in pursuance of an agreement to which subsections (1) and (2) above apply (by virtue of subsection (4) above).
- (6) For the purposes of this section the commencement day is such day as the Treasury may by order made by statutory instrument appoint.

### 103 Repurchases and stock lending

- (1) After section 89A of the Finance Act 1986 there shall be inserted the following section—

**“89AA Section 87: exception for repurchases and stock lending**

- (1) This section applies where a person (P) has entered into an arrangement with another person (Q) under which—
- (a) Q is to transfer chargeable securities of a particular kind to P or his nominee, and
  - (b) chargeable securities of the same kind and amount are to be transferred by P or his nominee to Q or his nominee,
- and the conditions set out in subsection (3) below are fulfilled.
- (2) Section 87 above shall not apply as regards an agreement to transfer chargeable securities to P or his nominee or Q or his nominee in accordance with the arrangement.
- (3) The conditions are—
- (a) that the agreement is effected on an EEA exchange or a recognised foreign exchange;
  - (b) that securities of the kind concerned are regularly traded on that exchange; and
  - (c) that chargeable securities are transferred to P or his nominee and Q or his nominee in pursuance of the arrangement.
- (4) An arrangement does not fall within subsection (1) above if—
- (a) the arrangement is not such as would be entered into by persons dealing with each other at arm’s length; or
  - (b) under the arrangement any of the benefits or risks arising from fluctuations, before the transfer to Q or his nominee takes place, in the market value of the chargeable securities accrues to, or falls on, P.
- (5) An agreement is effected on an exchange for the purposes of subsection (3) above if (and only if)—
- (a) it is subject to the rules of the exchange; and
  - (b) it is reported to the exchange in accordance with the rules of the exchange.
- (6) In this section—
- “EEA exchange” has the meaning given in section 88B(2) above;
- “recognised foreign exchange” has the meaning given in section 80B(3) above.
- (7) The Treasury may by regulations provide that if section 87 would apply as regards an agreement but for subsection (2) above, section 87 shall apply as regards the agreement but with the substitution of a rate of tax not exceeding 0.1 per cent. for the rate specified in subsection (6) of that section.
- (8) The Treasury may by regulations amend this section (as it has effect for the time being) in order—
- (a) to change the conditions for exemption from tax under this section; or

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- (b) to provide that this section does not apply in relation to kinds of arrangement specified in the regulations.
- (9) The power to make regulations under subsection (7) or (8) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.”
- (2) Section 89B of that Act (exceptions for stock lending and collateral security arrangements) shall be omitted.
- (3) In consequence of subsections (1) and (2) above, for section 88(1B)(b)(*ii*) of that Act (which is inserted by section 106(5)(c) below and which prevents repayment or cancellation of stamp duty reserve tax on certain agreements to transfer property consisting of chargeable securities which were acquired in pursuance of an agreement on which tax was not chargeable by virtue of section 89B(1)(a)) there shall be substituted—
- “(iia) in pursuance of an agreement to transfer securities which was made for the purpose of performing the obligation to transfer chargeable securities described in section 89AA(1)(a) below and as regards which section 87 above did not apply by virtue of section 89AA(2) below; or”.
- (4) After section 88(1B) of that Act there shall be inserted the following subsections—
- “(1C) Where—
- (a) there is an arrangement falling within subsection (1) of section 80C above (stamp duty relief for transfers in accordance with certain arrangements for B to transfer stock to A or his nominee and for A or his nominee to transfer stock of the same kind and amount back to B or his nominee), and
- (b) under the arrangement stock is transferred to A or his nominee by an instrument on which stamp duty is not chargeable by virtue only of section 80C(2) above, but
- (c) it becomes apparent that stock of the same kind or amount will not be transferred to B or his nominee by A or his nominee in accordance with the arrangement,
- the instrument shall be disregarded in construing section 92(1A) and (1B) below.
- (1D) Where—
- (a) an instrument transferring stock in accordance with an arrangement is stamped under section 80C(5) above, but
- (b) the instrument should not have been so stamped because the arrangement fell within section 80C(4)(a) or (b) above, and
- (c) apart from section 80C above stamp duty would have been chargeable on the instrument,
- the instrument shall be deemed to be duly stamped under section 80C(5) above, but shall be disregarded in construing section 92(1A) and (1B) below.”
- (5) Subsections (1) and (2) above apply to an agreement to transfer securities—
- (a) in the case of an agreement which is not conditional, if the agreement is made on or after the commencement day; and

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- (b) in the case of a conditional agreement, if the condition is satisfied on or after the commencement day.
- (6) Subsection (3) above applies in relation to property consisting of chargeable securities if the securities were acquired in pursuance of an agreement to which subsections (1) and (2) above apply (by virtue of subsection (5) above).
- (7) Subsection (4) above applies to instruments executed on or after the commencement day.
- (8) For the purposes of this section the commencement day is such day as the Treasury may by order made by statutory instrument appoint.

#### **104 Depository receipts and clearance services**

- (1) Subsection (5) of section 93 of the Finance Act 1986 (depository receipts: reduced rate of tax for qualified dealers other than market makers) shall be omitted.
- (2) Accordingly—
  - (a) in subsection (4) of that section for “(5) to” there shall be substituted “(6) and”;
  - (b) in subsection (7)(a) of that section for “subsections (4) to” there shall be substituted “subsections (4) and”;
  - (c) subsections (5) to (7) of section 94 of that Act (definition of “qualified dealer” and “market maker” for the purposes of section 93(5) and power to substitute different definition) shall be omitted.
- (3) Subsection (3) of section 96 of the Finance Act 1986 (clearance services: reduced rate of tax for qualified dealers other than market makers) shall be omitted.
- (4) Accordingly—
  - (a) in subsection (2) of that section, for “(3) to” there shall be substituted “(4) and”;
  - (b) in subsection (5)(a) of that section for “subsections (2) to” there shall be substituted “subsections (2) and”;
  - (c) subsection (11) of that section (definition of “qualified dealer” and “market maker” for the purposes of that section) shall be omitted.
- (5) This section applies where securities are transferred on or after the day which is the commencement day for the purposes of section 102 above, unless the securities were acquired by the transferor before that day.

#### **105 Inland bearer instruments**

- (1) Paragraph (b) of section 90(3) of the Finance Act 1986 (which provides that section 87 shall not apply as regards an agreement to transfer securities constituted by or transferable by means of an inland bearer instrument which does not fall within exemption 3 in the heading “Bearer Instrument” in Schedule 1 to the Stamp Act 1891) shall cease to have effect.
- (2) After section 90(3) of that Act there shall be inserted—
  - “(3A) Section 87 above shall not apply as regards an agreement to transfer chargeable securities constituted by or transferable by means of an inland bearer instrument within the meaning of the heading “Bearer Instrument” in



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Schedule 1 to the Stamp Act 1891 unless subsection (3B), (3C) or (3E) below applies to the instrument.

- (3B) This subsection applies to any instrument which falls within exemption 3 in the heading “Bearer Instrument” in Schedule 1 to the Stamp Act 1891 (renounceable letter of allotment etc. where rights are renounceable not later than six months after issue).
- (3C) This subsection applies to an instrument if—
- (a) the instrument was issued by a body corporate incorporated in the United Kingdom;
  - (b) stamp duty under the heading “Bearer Instrument” in Schedule 1 to the Stamp Act 1891 was not chargeable on the issue of the instrument by virtue only of—
    - (i) section 30 of the Finance Act 1967 (exemption for bearer instruments relating to stock in foreign currencies); or
    - (ii) section 7 of the Finance Act (Northern Ireland) 1967 (which makes similar provision for Northern Ireland); and
  - (c) the instrument is not exempt.
- (3D) An instrument is exempt for the purposes of subsection (3C) above if—
- (a) the chargeable securities in question are, or a depositary receipt for them is, listed on a recognised stock exchange; and
  - (b) the agreement to transfer those securities is not made in contemplation of, or as part of an arrangement for, a takeover of the body corporate which issued the instrument.
- (3E) This subsection applies to an instrument if—
- (a) the instrument was issued by a body corporate incorporated in the United Kingdom;
  - (b) stamp duty under the heading “Bearer Instrument” in Schedule 1 to the Stamp Act 1891 was not chargeable on the issue of the instrument—
    - (i) by virtue only of subsection (2) of section 79 above (exemption for bearer instruments relating to loan capital); or
    - (ii) by virtue only of that subsection and one or other of the provisions mentioned in subsection (3C)(b)(i) and (ii) above;
  - (c) by virtue of section 79(5) (convertible loan capital) or 79(6) (loan capital carrying special rights) above, stamp duty would be chargeable on an instrument transferring the loan capital to which the instrument relates; and
  - (d) the instrument is not exempt.
- (3F) An instrument is exempt for the purposes of subsection (3E) above if—
- (a) the chargeable securities in question are, or a depositary receipt for them is, listed on a recognised stock exchange;
  - (b) the agreement to transfer those securities is not made in contemplation of, or as part of an arrangement for, a takeover of the body corporate which issued the instrument; and
  - (c) those securities do not carry any right of the kind described in section 79(5) above (right of conversion into, or acquisition of, shares

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or other securities) by the exercise of which securities which are not listed on a recognised stock exchange may be obtained.”

(3) At the end of that section there shall be added—

“(8) For the purposes of subsections (3D) and (3F) above—

- (a) references to a depositary receipt for chargeable securities shall be construed in accordance with section 94(1) below;
- (b) “recognised stock exchange” has same meaning as it has in the Tax Acts by virtue of section 841 of the Income and Corporation Taxes Act 1988;
- (c) there is a takeover of a body corporate if a person, on his own or together with connected persons, loses or acquires control of it.

(9) For the purposes of subsection (8) above—

- (a) any question whether a person is connected with another shall be determined in accordance with section 286 of the Taxation of Chargeable Gains Act 1992;
- (b) “control” shall be construed in accordance with section 416 of the Income and Corporation Taxes Act 1988.”

(4) This section applies to an agreement if the inland bearer instrument in question was issued on or after 26th November 1996 and—

- (a) in the case of an agreement which is not conditional, the agreement is made on or after 26th November 1996; or
- (b) in the case of a conditional agreement, the condition is satisfied on or after 26th November 1996.

## **106 Repayment or cancellation of tax**

(1) Section 87 of the Finance Act 1986 (the principal charge) shall be amended in accordance with subsections (2) and (3) below.

(2) For subsection (7A) (deemed separate agreements where there would be no charge to tax etc had there been such agreements) there shall be substituted—

“(7A) Where—

- (a) there would be no charge to tax under this section, or
- (b) there would, under section 92 below, be a repayment or cancellation of tax,

in relation to some of the chargeable securities to which the agreement between A and B relates if separate agreements had been made between them for the transfer of those securities and for the transfer of the remainder, this section and sections 88(5) and 92 below shall have effect as if such separate agreements had been made.”

(3) Subsection (7B) (which, in consequence of the repeals made by section 188(1) of the Finance Act 1996, is of no further utility in relation to the charge to tax but whose effect is reproduced by subsection (8) below for the purposes of repayment or cancellation of tax) shall cease to have effect.

(4) Section 88 of the Finance Act 1986 (special cases) shall be amended in accordance with subsections (5) to (7) below.

- (5) In subsection (1B) (certain instruments on which stamp duty is not chargeable to be disregarded in construing the conditions in section 92(1A) and (1B) for repayment or cancellation of tax)—
- (a) in paragraph (a) (the property transferred by the instrument consists of chargeable securities) after “consists of” there shall be inserted “or includes”;
  - (b) in paragraph (b) (which relates to the acquisition of the chargeable securities so transferred) for “the chargeable securities” there shall be substituted “any of those chargeable securities”; and
  - (c) the word “or” at the end of sub-paragraph (ii) of that paragraph shall be omitted and after that sub-paragraph there shall be inserted—
    - “(ia) in pursuance of an agreement to transfer securities which was made for the purpose of performing the obligation to transfer chargeable securities described in paragraph (a) of subsection (1) of section 89B below and as regards which section 87 above did not apply by virtue of that subsection; or”.
- (6) For subsections (4) and (5) (identification of the securities in question and reduction of the charge in certain cases) there shall be substituted—
- “(4) If chargeable securities cannot (apart from this subsection) be identified for the purposes of subsection (1B) above, securities shall be taken as follows, that is to say, securities of the same kind acquired later in the period of two years there mentioned (and not taken for the purposes of that subsection in relation to an earlier instrument) shall be taken before securities acquired earlier in that period.
- (5) If, in the case of an agreement (or of two or more agreements between the same parties) to transfer chargeable securities—
- (a) the conditions in section 92(1A) and (1B) below are not satisfied by virtue only of the application of subsection (1B) above in relation to the instrument (or any one or more of the two or more instruments) in question, but
  - (b) not all of the chargeable securities falling to be regarded for the purposes of that subsection as transferred by the instrument (or by the two or more instruments between them) were acquired as mentioned in paragraphs (a) and (b) of that subsection,
- stamp duty reserve tax shall be repaid or cancelled under section 92 below in accordance with subsection (5A) below.
- (5A) Any repayment or cancellation of tax falling to be made by virtue of subsection (5) above shall be determined as if (without prejudice to section 87(7A) above) there had, instead of the agreement (or the two or more agreements) in question been—
- (a) a separate agreement (or two or more separate agreements) relating to such of the securities as were acquired as mentioned in paragraphs (a) and (b) of subsection (1B) above, and
  - (b) a single separate agreement relating to such of the securities as do not fall within those paragraphs,
- and as if the instrument in question (or the two or more instruments in question between them) had related only to such of the securities as do not fall within those paragraphs.”

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- (7) For the sidenote, there shall be substituted “Special cases.”
- (8) In section 92 of the Finance Act 1986 (repayment or cancellation of tax), after subsection (6) there shall be inserted—
- “(7) This section shall have effect in relation to a person to whom the chargeable securities are transferred by way of security for a loan to B as it has effect in relation to a nominee of B.”
- (9) The amendments made by subsections (2), (3) and (8) above have effect in relation to an agreement to transfer securities if—
- (a) the agreement is conditional and the condition is satisfied on or after 4th January 1997; or
- (b) the agreement is not conditional and is made on or after that date.
- (10) The amendments made by subsections (5) and (6) above have effect where the instrument on which stamp duty is not chargeable by virtue of section 42 of the Finance Act 1930 or section 11 of the Finance Act (Northern Ireland) 1954 is executed on or after 4th January 1997 in pursuance of an agreement to transfer securities made on or after that date.