



# Finance Act 1999

## 1999 CHAPTER 16

### PART VI

#### STAMP DUTY AND STAMP DUTY RESERVE TAX

##### *Stamp duty reserve tax*

#### **116 Non-sterling bearer instruments issued in connection with merger or takeover**

(1) In section 95 of the Finance Act 1986 (exceptions from charge on entry into depositary receipt system), for subsection (2) (bearer instruments) substitute—

“(2) There shall be no charge to tax under section 93 above in respect of a transfer, issue or appropriation of an inland bearer instrument, within the meaning of the heading “Bearer Instrument” in Schedule 1 to the Stamp Act 1891, except in the case of—

- (a) an instrument within exemption 3 in that heading (renounceable letters of allotment etc. where rights are renounceable not later than six months after issue); or
- (b) an instrument within the stamp duty exemption for non-sterling instruments which is issued in connection with a company merger or takeover (whether or not involving the company issuing the instrument).

In paragraph (b) “the stamp duty exemption for non-sterling instruments” means the exemption from stamp duty provided for by section 30 of the Finance Act 1967 or section 7 of the Finance Act (Northern Ireland) 1967.”.

(2) In section 97 of the Finance Act 1986 (exceptions from charge on entry into clearance system), for subsection (3) (bearer instruments) substitute—

“(3) There shall be no charge to tax under section 96 above in respect of a transfer or issue of an inland bearer instrument, within the meaning of the heading

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“Bearer Instrument” in Schedule 1 to the Stamp Act 1891, except in the case of—

- (a) an instrument within exemption 3 in that heading (renounceable letters of allotment etc. where rights are renounceable not later than six months after issue); or
- (b) an instrument within the stamp duty exemption for non-sterling instruments which is issued in connection with a company merger or takeover (whether or not involving the company issuing the instrument).

In paragraph (b) “the stamp duty exemption for non-sterling instruments” means the exemption from stamp duty provided for by section 30 of the Finance Act 1967 or section 7 of the Finance Act (Northern Ireland) 1967.”.

- (3) This section applies to any instrument issued on or after 30th January 1999, except one giving effect to an agreement for a company merger or takeover entered into in writing by the companies involved before that date.

#### **117 Scope of exceptions for certain bearer instruments**

- (1) In section 95(2) of the Finance Act 1986 (bearer instruments excepted from charge on entry into depositary receipt system), for paragraph (b) (one of the categories of instrument to which the exception does not apply) substitute—

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  - (b) an instrument within the stamp duty exemption for non-sterling instruments which—
    - (i) does not raise new capital, and
    - (ii) is not issued in exchange for an instrument raising new capital.”.”

- (2) After that subsection insert—

“(2A) For the purpose of subsection (2)(b)—

- (a) an instrument is regarded as raising new capital only if the condition in subsection (2B) is met, and
- (b) an instrument is regarded as issued in exchange for an instrument raising new capital only if the conditions in subsection (2C) are met.

(2B) The condition mentioned in subsection (2A)(a) is that the instrument—

- (a) is issued in conjunction with—
  - (i) the issue of relevant securities for which only cash is subscribed, or
  - (ii) the granting of rights to subscribe for relevant securities which are granted for a cash consideration only and exercisable only by means of a cash subscription; or
- (b) is issued to give effect to the exercise of such rights as are mentioned in paragraph (a)(ii).

(2C) The conditions mentioned in subsection (2A)(b) are that—

- (a) the instrument is issued in conjunction with the issue of relevant securities by a company in exchange for relevant securities issued by another company, and

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- (b) immediately before the exchange an instrument relating to those other securities—
  - (i) was regarded for the purposes of subsection (2)(b) as raising new capital or as issued in exchange for an instrument raising new capital, or
  - (ii) would have been so regarded if the amendments made to this section by section 117 of the Finance Act 1999 had been in force at the time of its issue,and accordingly was or would have been within the exception conferred by subsection (2).
- (2D) For the purposes of subsections (2B) and (2C) “relevant securities” means chargeable securities which are either—
  - (a) shares the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company, or
  - (b) loan capital within the meaning of section 78 above,and which, in either case, do not carry any rights (of conversion or otherwise) by the exercise of which chargeable securities other than relevant securities may be obtained.”.
- (3) For subsection (6) of that section substitute—
  - “(6) Where an arrangement is entered into under which—
    - (a) a company issues securities to persons in respect of their holdings of securities issued by another company, and
    - (b) the securities issued by the other company are cancelled,the issue shall be treated for the purposes of this section as an issue of securities in exchange for securities issued by the other company.”.
- (4) In section 97(3) of that Act (bearer instruments excepted from charge on entry into clearance system), for paragraph (b) (one of the categories of instrument to which the exception does not apply) substitute—
  - “(b) an instrument within the stamp duty exemption for non-sterling instruments which—
    - (i) does not raise new capital, and
    - (ii) is not issued in exchange for an instrument raising new capital.”.
- (5) After that subsection insert—
  - “(3A) For the purpose of subsection (3)(b)—
    - (a) an instrument is regarded as raising new capital only if the condition in subsection (3B) is met, and
    - (b) an instrument is regarded as issued in exchange for an instrument raising new capital only if the conditions in subsection (3C) are met.
  - (3B) The condition mentioned in subsection (3A)(a) is that the instrument—
    - (a) is issued in conjunction with—
      - (i) the issue of relevant securities for which only cash is subscribed, or

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- (ii) the granting of rights to subscribe for relevant securities which are granted for a cash consideration only and exercisable only by means of a cash subscription; or
  - (b) is issued to give effect to the exercise of such rights as are mentioned in paragraph (a)(ii).
- (3C) The conditions mentioned in subsection (3A)(b) are that—
- (a) the instrument is issued in conjunction with the issue of relevant securities by a company in exchange for relevant securities issued by another company, and
  - (b) immediately before the exchange an instrument relating to those other securities—
    - (i) was regarded for the purposes of subsection (3)(b) as raising new capital or as issued in exchange for an instrument raising new capital, or
    - (ii) would have been so regarded if the amendments made to this section by section 117 of the Finance Act 1999 had been in force at the time of its issue,
 and accordingly was or would have been within the exception conferred by subsection (3).
- (3D) For the purposes of subsections (3B) and (3C) “relevant securities” means chargeable securities which are either—
- (a) shares the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company, or
  - (b) loan capital within the meaning of section 78 above,
- and which, in either case, do not carry any rights (of conversion or otherwise) by the exercise of which chargeable securities other than relevant securities may be obtained.”.
- (6) For subsection (7) of that section substitute—
- “(7) Where an arrangement is entered into under which—
- (a) a company issues securities to persons in respect of their holdings of securities issued by another company, and
  - (b) the securities issued by the other company are cancelled,
- the issue shall be treated for the purposes of this section as an issue of securities in exchange for securities issued by the other company.”.
- (7) Subsections (1) to (6) above apply in relation to any instrument issued on or after 9th March 1999, except one giving effect to an agreement for a company merger or takeover entered into in writing by the companies involved before 30th January 1999.

## **118 Relief in case of certain replacement securities**

- (1) After section 95 of the Finance Act 1986 (depository receipts: exceptions) insert—

### **“95A Depository receipts: exception for replacement securities**

- (1) There shall be no charge to tax under section 93 above in respect of the transfer, issue or appropriation of chargeable securities (“the new securities”)

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issued by a company in place of existing securities of the same company (“the old securities”) if the following conditions are met.

- (2) The first condition is that the old securities are held under a depositary receipt scheme.
  - (3) The second condition is that—
    - (a) there was a charge to tax under section 93 above in respect of the transfer, issue or appropriation—
      - (i) of the old securities, or
      - (ii) of earlier securities in relation to which on a previous application of this section those securities were the new securities,or there would have been such a charge if that section had been in force; or
    - (b) there would have been such a charge but for section 95(2) or (3) above.
  - (4) The third condition is that there is an arrangement under which—
    - (a) the new securities are transferred, issued or appropriated as mentioned in section 93(1)(b), and
    - (b) the old securities are cancelled.
  - (5) For the purposes of subsection (2) above the cases in which securities are held under a depositary receipt scheme are those specified (in relation to shares) in section 95(5) above.
  - (6) The exception provided by this section applies only to the extent that the value of the new securities immediately after their issue does not exceed the value of the old securities immediately before the issue of the new securities.”.
- (2) In section 99(10) of that Act (meaning of “chargeable securities”), after “95,” insert “95A,”.
- (3) After section 97 of that Act (clearance services: exceptions) insert—

**“97AA Clearance services: further exception**

- (1) There shall be no charge to tax under section 96 above in respect of the transfer or issue of chargeable securities (“the new securities”) issued by a company in place of existing securities of the same company (“the old securities”) if the following conditions are met.
- (2) The first condition is that the old securities are held under a clearance services scheme.
- (3) The second condition is that—
  - (a) there was a charge to tax under section 96 above in respect of the transfer or issue—
    - (i) of the old securities, or
    - (ii) of earlier securities in relation to which on a previous application of this section those securities were the new securities,

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- or there would have been such a charge if that section had been in force; or
- (b) there would have been such a charge but for section 97(3) or (4) above.
- (4) The third condition is that there is an arrangement under which—
  - (a) the new securities are transferred or issued as mentioned in section 96(1)(b), and
  - (b) the old securities are cancelled.
- (5) For the purposes of subsection (2) above the cases in which securities are held under a clearance services scheme are those specified (in relation to shares) in section 97(6) above.
- (6) The exception provided by this section applies only to the extent that the value of the new securities immediately after their issue does not exceed the value of the old securities immediately before the issue of the new securities.”
- (4) In section 99(10) of that Act (meaning of “chargeable securities”), after “97” insert “, 97AA”.
- (5) This section applies in relation to securities issued on or after 1st May 1998.

#### **119 Power to exempt UK depositary interests in foreign securities**

- (1) The Treasury may by regulations make provision excluding from the definition of “chargeable securities” in Part IV of the Finance Act 1986 such rights in or in relation to securities as, in accordance with the regulations, are to be treated as exempt UK depositary interests in foreign securities.
- (2) Subject to subsection (3), the regulations may—
  - (a) define “depositary interest”, “UK depositary interest” and “foreign securities” for this purpose; and
  - (b) exempt such descriptions of UK depositary interests in foreign securities (as so defined) as may from time to time be specified in the regulations.
- (3) The regulations shall not make provision for the exemption of a depositary interest unless the terms of issue of the interest are such that it can only be transferred in accordance with regulations under section 207 of the Companies Act 1989 (transfer of securities without written instrument) or by means of a transfer within section 186(1) of the Finance Act 1996 (transfer of securities to member of electronic transfer system).
- (4) The regulations may contain such incidental, supplementary, consequential and transitional provision as appears to the Treasury to be appropriate.
 

This may include provision modifying the enactments relating to stamp duty reserve tax for the purpose of giving effect to the exemption conferred by regulations under this section (or, where earlier regulations are varied or revoked, withdrawing an exemption formerly conferred).
- (5) Regulations under this section may make different provision for different cases.
- (6) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

## **120 Minor amendments of exceptions to general charge**

- (1) Section 90 of the Finance Act 1986 (exceptions from the general charge to stamp duty reserve tax) is amended as follows.
- (2) In subsection (3F)(c) (conditions of exception under subsection (3E)) for “securities which are not listed” substitute “chargeable securities which are not listed”.
- (3) In subsection (5) for “by a person” substitute “for the purposes of a business”; and in subsection (6) for “A person is within this subsection if his business is exclusively” substitute “A business is within this subsection if, or so far as, it consists of”.
- (4) Subsection (2) above applies to instruments issued on or after 9th March 1999.
- (5) Subsection (3) above applies to agreements to transfer securities made on or after 9th March 1999.

## **121 Power to make regulations with respect to administration, etc**

- (1) The following provisions have effect with respect to the power conferred on the Treasury by section 98(1) of the Finance Act 1986 (stamp duty reserve tax: regulations with respect to administration, etc.).
- (2) That power includes power to make provision—
  - (a) applying the provisions of the Taxes Management Act 1970 relating to penalties and the payment of interest on overdue tax, and
  - (b) requiring information to be provided, or books, documents or other records to be made available for inspection, and imposing a penalty for failure to do so.
- (3) That power includes, and shall be deemed always to have included, power to make provision requiring specified descriptions of persons to account for and pay tax, and any interest on it, on behalf of the person liable to pay it.