

FINANCE ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Section 65: Stamp Duty and Sdrt: Clearing Houses

Summary

1. [Section 65](#) provides that members of clearing houses and their nominees are explicitly included in the enabling legislation that permits regulations to be made by HM Treasury removing additional charges to stamp duty and stamp duty reserve tax (SDRT) when share trades are cleared through a central counterparty.

Details of the Section

2. Subsection (1) provides for the enabling powers in sections 116 and 117 of the Finance Act (FA) 1991 to make regulations that give relief from stamp duty and SDRT to explicitly include members of clearing houses and the nominees of members of clearing houses within the categories of entities that can be granted relief.
3. Subsection (2) provides that the amendments are to be treated as always having had effect.

Background Note

4. Stamp duty is charged on instruments transferring stock or marketable securities. SDRT is payable upon agreements to transfer chargeable securities where no instrument of transfer is executed. Both stamp duty and SDRT are charged at rate of 0.5 per cent of the consideration for the securities (stamp duty is not charged where the duty would be less than £5).
5. When a transfer of securities occurs, the buyer and the seller can settle directly with one another, the buyer giving consideration in return for the seller's shares. It is, however, common for the parties in the deal to "clear" the trade. Clearing provides a guarantee to the ultimate seller and buyer that the deal will be completed should either party default, the seller receiving the consideration and the purchaser the securities.
6. When transactions in UK securities are cleared through a central counterparty such as a clearing house, a chain of transactions will arise involving exchange members, their nominees, the clearing house itself, and the members and nominees of the clearing house, each of which will potentially give rise to a charge to stamp duty or SDRT for what is essentially a single transaction of sale and purchase. HM Treasury, under powers contained in FA 1991, can make regulations that remove all but the last of these charges.
7. The Select Committee on Statutory Instruments (report dated 9 December 2009) has reported regulations made recently as possibly going beyond the scope of the enabling power which mentions members of recognised investment exchanges but not members of clearing houses. This has resulted in confusion and uncertainty amongst financial market participants as to the validity of the regulations already made. Future regulations

*These notes refer to the Finance Act 2010 (c.13)
which received Royal Assent on 8 April 2010*

made under these powers will also need to provide for relief for clearing members and their nominees.

8. This section amends the enabling powers to explicitly provide relief to clearing members (and their nominees). The section also provides that the amendment to the powers shall be treated as having always had effect. The policy aim is therefore met that only a single charge to stamp duty or SDRT shall arise when a transaction is cleared.