EXPLANATORY MEMORANDUM TO

THE STAMP DUTY AND STAMP DUTY RESERVE TAX (LCH SA) REGULATIONS 2022

2022 No. 102

1. Introduction

1.1 This explanatory memorandum has been prepared by HM 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 These regulations remove multiple charges to Stamp Duty and Stamp Duty Reserve Tax (SDRT) for securities that are transferred to the clearing house known as LCH SA, its clearing participants or its nominees, where the purpose of the transfer is the onward clearing of those securities to the ultimate purchaser.

2.2 The regulations apply to transactions made on a regulated market such as a Stock Exchange, a multilateral trading facility (a type of financial trading venue) or over the counter (direct trading between buyers and sellers), which are transferred through the LCH SA clearing chain. These regulations ensure that stamp charges are only paid once, as intended, by the ultimate purchaser.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

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

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Stamp Duty is charged on a paper written instrument or other document which transfers on sale ‘stock or marketable securities’ (as defined by Section 122 of the Stamp Act 1891). Part 1 of Schedule 13 to the Finance Act 1999 provides that the rate of Stamp Duty is 0.5% calculated by reference to the amount or value of consideration paid.

6.2 Where no paper written instrument is executed and the transaction is to be settled electronically, a 0.5% SDRT charge replaces the Stamp Duty charge. Section 87 of the Finance Act 1986 provides that an SDRT charge arises whenever ‘chargeable securities’ (as defined under section 99(3) of that Act) are ‘agreed to be transferred’.

6.3 Section 99(5) of the Finance Act 1986 provides that chargeable securities do not include securities the transfer of which are exempt from all stamp duties.

6.4 When shares in United Kingdom (UK) companies are traded in the financial markets either on a regulated market, a multilateral trading facility, or directly over the counter, a central counterparty (CCP) acting as a middle person between the buyer and seller is used to clear and settle the transaction. The process of clearing will involve multiple transfers of those shares, each of which is potentially chargeable to Stamp Duty or SDRT.

6.5 Sections 116 and 117 of the Finance Act 1991 permit the Treasury to make regulations to remove such multiple charges in respect of what is essentially a single sale and purchase.

6.6 These regulations will ensure that multiple charges to Stamp Duty or SDRT will not arise when shares are transferred through the LCH SA clearing chain in the circumstances prescribed in the regulations.

7. Policy background

What is being done and why?

7.1 Where UK securities are transferred, the transaction is subject to stamp tax. This is either Stamp Duty on paper instruments or documents or SDRT on agreements to transfer where the transfer will take place electronically. SDRT is not payable where either a document has been stamped for Stamp Duty purposes or is exempt from Stamp Duty.

7.2 The interposition of a clearing house acting as a CCP between the ultimate seller and the ultimate purchaser in share trades results in a chain of transfers of securities each of which potentially attracts a charge to Stamp Duty or SDRT.

7.3 LCH SA is a clearing house 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 (SI 2018/1184).

7.4 LCH SA as a clearing house intends to clear securities within the scope of Stamp Duty and SDRT and has requested that such stamp charges are not applied to it.

7.5 This instrument will maintain liquidity in the securities markets by continuing to ensure that multiple charges to Stamp Duty and SDRT do not arise in respect of what is essentially a single transaction.

Explanations

What did any law do before the changes to be made by this instrument?

7.6 Transfers of securities within the scope of Stamp Duty and SDRT to the clearing house known as LCH SA and its clearing participants would be liable to a stamp charge.

Why is it being changed?

7.7 LCH SA is a relevant entity which qualifies under the relief rules and has requested that relief from Stamp Duty and SDRT is afforded to it as it intends to clear securities liable to a stamp charge.

What will it now do?

7.8 The changes being made by this instrument will ensure that a charge to Stamp Duty or SDRT will not arise when securities liable to a stamp charge are transferred to LCH SA, a clearing participant of LCH SA or its nominee where the purpose of the transfer is the clearing of those securities.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate this instrument.

10. Consultation outcome

10.1 These regulations are made in response to a direct request by LCH SA for relief to be afforded to it. Therefore, no public consultation is required.

11. Guidance

11.1 HMRC has published guidance about the relief afforded to clearing houses, so no further HMRC guidance or other form of publicity is regarded as necessary. The existing guidance is available at https://www.gov.uk/hmrc-internal-manuals/stamp-taxes-shares-manual/stsm042340.

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 covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring this legislation is that HMRC will monitor the changes through the regular checking and analysis of tax notices.

14.2 The instrument does not include a statutory review clause because the legislation relates to taxes, duties, levies or other charges and falls within the exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Rob Read at HMRC, Telephone: 03000 585 526 or email: sts.consultation@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Morris Graham, Deputy Director for Stamp Taxes Team in Business Assets and International, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Economic Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.