

**2009 No. 2977**

**STAMP DUTY**

**STAMP DUTY RESERVE TAX**

**The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 15) 2009**

<i>Made</i>	- - - -	<i>10th November 2009</i>
<i>Laid before the House of Commons</i>		<i>11th November 2009</i>
<i>Coming into force</i>	- -	<i>4th December 2009</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 (Investment Exchanges and Clearing Houses) Regulations (No. 15) 2009 and shall come into force on 4th December 2009.

(2) These Regulations shall have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 4th December 2009;
- (b) for the purposes of the charge to stamp duty reserve tax—
  - (i) in the case of agreements to transfer traded securities which are not conditional, in relation to agreements made on or after 4th December 2009;
  - (ii) in the case of agreements to transfer traded securities which are conditional, in relation to agreements where the condition is satisfied on or after that date.

**Interpretation**

2. In these Regulations—

“clearing participant” means a member of EuroCCP or X-CLEAR who as such is permitted by the Rules of that clearing house to clear transactions made on the Facility for a traded security and who may or may not also be a participant in the Facility;

“client” means a person who gives instructions to a non-clearing firm for traded securities to be sold on the Facility;

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(a) 1991 c. 31. Section 116(4) was amended by paragraph 5 of Schedule 20 to the Financial Services and Markets Act 2000 (c. 8) and by paragraph 7 of Schedule 21 to the Finance Act 2007 (c. 11).

“EuroCCP” means European Central Counterparty Limited, a company which is a recognised clearing house under the Financial Services and Markets Act 2000(a);

“the Facility” means the multilateral trading facility operated by Smartpool Trading Limited, a body corporate which is permitted to operate a multilateral trading facility for the purposes of Part 4 of the Financial Services and Markets Act 2000;

“X-CLEAR” means SIX X-CLEAR AG, a company which is a recognised clearing house under the Financial Services and Markets Act 2000;

“nominee” means a person whose business is or includes holding traded securities as a nominee for EuroCCP or X-CLEAR acting in its capacity as a person providing clearing services in connection with a transaction made on the Facility, or as a nominee for a clearing participant (as the case may be);

“non-clearing firm” means a participant in the Facility other than a clearing participant;

“traded securities” means stocks and shares which are issued or raised by a body corporate but does not include stocks and shares issued 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(b), with shares issued by a body corporate incorporated in the United Kingdom.

### **Prescription of recognised investment exchange and recognised clearing house**

3. For the purposes of sections 116 and 117 of the Finance Act 1991—

- (a) the SmartPool Multilateral Trading Facility (“the Facility”) is prescribed as a recognised investment exchange;
- (b) EuroCCP is prescribed as a recognised clearing house; and
- (c) X-CLEAR is prescribed as a recognised clearing house.

### **Prescribed circumstances for the purposes of sections 116 and 117**

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

(2) The circumstances prescribed are where, in connection with a transaction made on the Facility conditions A and B are met.

(3) Condition A is that traded securities of a particular kind are transferred, or agreed to be transferred, from—

- (a) a clearing participant or a nominee of a clearing participant to another clearing participant or nominee,
- (b) a non-clearing firm or its client (or a nominee of a non-clearing firm or its client) to a clearing participant or a nominee of a clearing participant,
- (c) a clearing participant or a nominee of a clearing participant to EuroCCP or X-CLEAR or to a nominee of EuroCCP or X-CLEAR,
- (d) a person other than a clearing participant to EuroCCP or X-CLEAR or to a nominee of EuroCCP or X-CLEAR, as a result of a failure by a clearing participant to fulfil their obligations in respect of the transaction concerned to transfer traded securities to EuroCCP or X-CLEAR or to a nominee of EuroCCP or X-CLEAR,

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(a) 2000 c. 8.

(b) 1986 c. 41. Subsection (6A) was inserted by the Finance Act 1988 (c. 39), section 144 and was amended by section 113(2) of the Finance Act 1990 (c. 29). The whole of Part 4 of the 1986 Act is to be repealed from a date to be appointed (see sections 110 and 111(1) of the 1990 Act).

- (e) EuroCCP or X-CLEAR or a nominee of EuroCCP or X-CLEAR to a clearing participant or a nominee of a clearing participant,
- (f) EuroCCP or a nominee of EuroCCP to X-CLEAR or a nominee of X-CLEAR, or
- (g) X-CLEAR or a nominee of X-CLEAR to EuroCCP or a nominee of EuroCCP.

(4) Condition B is that the person to whom those securities are agreed to be transferred under any of the agreements specified in paragraph (3) above (“the relevant agreement”) is required on receipt of those securities to transfer traded securities under a matching agreement to another person or, in the case of an agreement falling within paragraph (3)(d), would have been so required if the failure referred to in that paragraph had not occurred.

(5) In this regulation—

- (a) “matching agreement” means an agreement under which—
  - (i) the traded securities agreed to be transferred are of the same kind as the traded securities agreed to be transferred under the relevant agreement, and
  - (ii) the number and transfer price of the traded securities agreed to be transferred are identical to the number and transfer price of the traded securities agreed to be transferred under the relevant agreement;
- (b) references to EuroCCP and X-CLEAR are references to those clearing houses in their capacity as persons providing clearing services in connection with a transaction made on the Facility;
- (c) references to a clearing participant are references to a clearing participant in his capacity as such.

#### **Consequential provision**

5.—(1) Traded securities which are the subject of an agreement specified in regulation 4(3) shall be dealt with by a clearing participant who is a party to the agreement in a separate designated account, and not otherwise.

(2) In paragraph (1) “designated account” means an account designated by EuroCCP or X-CLEAR for a clearing participant in connection with the traded securities concerned.

#### **Revocation of the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 2)**

6. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No.2) 2009 (SI 2009/194)(a) are hereby revoked as respects instruments and agreements referred to in regulation 1(2) of these regulations.

10th November 2009

*Steve McCabe*  
*Tony Cunningham*  
Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) S.I. 2009/194

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations exempt from stamp duty and stamp duty reserve tax (“SDRT”) certain transfers of, or agreements to transfer traded securities made in the course of trading in those securities on the SmartPool Multilateral Trading Facility (“the Facility”). The transfers and agreements exempted are those involving European Central Counterparty Limited (“EuroCCP”) and/or SIX X-CLEAR AG (“X-CLEAR”) (and nominees of those clearing houses), through whom transactions on the Facility are cleared, or clearing participants in EuroCCP and/or X-CLEAR (and their nominees).

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

Regulation 3 prescribes the Facility as a recognised investment exchange and EuroCCP and X-CLEAR as recognised clearing houses for the purpose of the exemption and regulation 4 prescribes the circumstances in which stamp duty and SDRT will not be charged.

Regulation 5 makes consequential provision requiring traded securities which are agreed to be transferred in the prescribed circumstances to be dealt with in a separate designated account.

Regulation 6 revokes the previously laid Regulations relating to the Facility as respects instruments or agreements in relation to which the present Regulations have effect.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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