

**EXPLANATORY MEMORANDUM TO**  
**THE STAMP DUTY AND STAMP DUTY RESERVE TAX (INVESTMENT**  
**EXCHANGES AND CLEARING HOUSES) (OVER THE COUNTER)**  
**REGULATIONS 2009**

**2009 No. 3088**

**1. Introduction**

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

**2. Purpose of the Statutory Instrument**

2.1 This Statutory Instrument (SI) contains regulations that remove the charge to Stamp Duty or Stamp Duty Reserve Tax (SDRT) when, as a result of the execution of over-the-counter trades, shares in UK companies are transferred between clearing members of European Central Counterparty Ltd (EuroCCP), by non-clearing members (or their nominees) to clearing members (or their nominees), and to or from EuroCCP itself.

2.2 EuroCCP is prescribed as a recognised clearing house. The regulations will apply to instruments executed to give effect to share transfers that take place on or after 18 December 2009, to electronic transfers that take place on or after 18 December 2009 and to conditional agreements where the condition is satisfied on or after that date. These regulations provide relief to trades that are arranged over-the-counter. An over-the-counter trade is a trade that is made other than through an investment exchange.

2.3 The aim is to exempt EuroCCP, and its members and nominees, from stamp duty and SDRT on transactions when it acts as a central counterparty.

**3. Matters of Special Interest to the Select Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 Sections 116 and 117 of the Finance Act 1991 enable the Treasury to make regulations in relation to recognised clearing houses and their members/nominees.

4.2 When shares in UK companies are traded over-the-counter, the use of a central counterparty to clear and settle the transactions will involve a number of

transfers of those shares each of which is potentially chargeable to stamp duty or SDRT.

4.3 These regulations will ensure that multiple charges to stamp duty or SDRT will not arise when shares are transferred between non-clearing and clearing members of EuroCCP and to/from EuroCCP itself.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

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

## **7. Policy Background**

- *What is being done and why*

7.1 The parent Act, Finance Act 1991, provides for investment exchanges or clearing houses to be prescribed by the making of regulations to exclude them from Stamp Duty and Stamp Duty Reserve Tax charges within defined circumstances (Sections 116 and 117 FA 1991).

7.2 The regulations remove multiple charges to Stamp Duty or SDRT from trades conducted over-the-counter with EuroCCP acting as a recognised clearing house. The regulations may aid liquidity in the securities market by enabling over-the-counter transactions to be settled through a clearing house thus reducing the risk of the transaction for both sellers and buyers.

7.3 Public interest is likely to be minimal. Interest from the financial industry will be greater.

7.4 The change is not seen as politically or legally important.

- *Consolidation*

7.5 None.

## **8. Consultation Outcome**

8.1 No consultation has been undertaken in relation to this specific matter, although the named party has agreed to the form of the regulations.

## **9. Guidance**

- 9.1 No guidance over and above the publication of the Statutory Instrument is anticipated as it relates to a specific business and any publicity relating to the Instrument's purpose will rest with that business.

## **10. Impact**

- 10.1 There is no impact upon wider business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An impact assessment has not been prepared for this instrument.

## **11. Regulating Small Business**

- 11.1 The instrument does not apply to small business.

## **12. Monitoring and Review**

- 12.1 None specifically required in relation to the purpose of the regulations. Reviews of compliance with the practical application of the new regulations will form part of the compliance review programme of the Excise, Customs, Stamps and Money Businesses Directorate of HMRC.

## **13. Contact**

Andrew Hewitt at HM Revenue and Customs  
Tel: 020 7147 0092  
E-mail: [andrew.hewitt@hmrc.gsi.gov.uk](mailto:andrew.hewitt@hmrc.gsi.gov.uk)