
STATUTORY INSTRUMENTS

2010 No. 2236

STAMP DUTY
STAMP DUTY RESERVE TAX

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 5) 2010

<i>Made</i>	- - - -	<i>9th September 2010</i>
<i>Laid before the House of Commons</i>	- - - -	<i>10th September 2010</i>
<i>Coming into force</i>	- -	<i>4th October 2010</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 116 and 117 of the Finance Act 1991⁽¹⁾.

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. 5) 2010 and come into force on 4th October 2010.

(2) These Regulations have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 4th October 2010;
- (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 October 2010;
 - (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—

⁽¹⁾ 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). Sections 116(1)(b) and 117(1)(b) were amended by section 65 of the Finance Act 2010 (c. 13).

- (a) EuroCCP who as such is permitted by the Rules of EuroCCP, or
 - (b) X-CLEAR who as such is permitted by the Rules of X-CLEAR,
- to clear transactions made on the UBS MTF for a traded security and who may or may not also be a participant on the UBS MTF;
- “client” means a person who gives instructions to a non-clearing firm for traded securities to be sold on the UBS MTF;
- “EuroCCP” means European Central Counterparty Limited⁽²⁾;
- “X-CLEAR” means SIX X-CLEAR AG;
- “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 UBS MTF, or as a nominee for a clearing participant;
- “non-clearing firm” means a participant on the UBS MTF 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 or raised by a body corporate not incorporated in the United Kingdom unless—
- (c) the stocks and shares are registered in a register kept in the United Kingdom by or on behalf of the body corporate; or
 - (d) in the case of shares, they are paired, within the meaning of section 99(6A) of the Finance Act 1986⁽³⁾, with shares issued by a body incorporated in the United Kingdom;
- “UBS MTF” is a multilateral trading facility operated by UBS Limited⁽⁴⁾.

Prescription of recognised investment exchanges and recognised clearing houses

3. For the purposes of sections 116 and 117 of the Finance Act 1991—
- (a) UBS MTF 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 charges to stamp duty and stamp duty reserve tax shall be treated as not arising.

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

- (3) Condition A is that traded securities are transferred, or agreed to be transferred, from—
- (a) a clearing participant or its nominee to another clearing participant or its nominee;
 - (b) a non-clearing firm or its client, or nominee of a non-clearing firm or its client, to a clearing participant or its nominee;
 - (c) a clearing participant or its nominee to either EuroCCP or X-CLEAR, or to their nominees;

(2) EuroCCP and X-CLEAR are recognised clearing houses within the meaning of the Financial Services and Markets Act 2000 and sections 116(4)(c) and 117(3) of the Finance Act 1991.

(3) 1986 c. 41. Section 99(6A) was inserted by section 144 of the Finance Act 1988 (c. 39), and was amended by section 113(2) of the Finance Act 1990 (c. 29).

(4) UBS Limited is permitted under the Financial Services and Markets Act 2000 to operate a multilateral trading facility within the meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (O.J. L 145, 30.4.2004, p. 1).

- (d) a person other than a clearing participant to either EuroCCP or X-CLEAR, or to their nominees, as a result of a failure by a clearing participant to fulfil its obligations in respect of the transaction concerned to transfer traded securities to either EuroCCP or X-CLEAR, or to their nominees;
 - (e) either EuroCCP or X-CLEAR, or their nominees, to a clearing participant or its nominee;
 - (f) EuroCCP or its nominee to X-CLEAR or its nominee; or
 - (g) X-CLEAR or its nominee to EuroCCP or its nominee.
- (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) (“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) Condition C is that traded securities which are the subject of a relevant agreement shall be dealt with by a clearing participant, who is a party to the relevant agreement, in a separate designated account.
- (6) In this regulation—
- (a) “designated account” means an account designated by EuroCCP or X-CLEAR, for a clearing participant, in connection with the traded securities concerned;
 - (b) 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.

9th September 2010

Jeremy Wright
Michael Fabricant
Two of the Lords Commissioners of Her
Majesty’s Treasury

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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 UBS MTF, a multilateral trading facility operated by UBS Limited. The transfers and agreements exempted are those involving European Central Counterparty Limited (“EuroCCP”) and/or SIX X-CLEAR AG (“X-CLEAR”), and nominees of either clearing house, (through whom transactions on the UBS MTF 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 UBS MTF as a recognised investment exchange, and EuroCCP and X-CLEAR as recognised clearing houses for the purpose of the exemption.

Regulation 4 prescribes the circumstances in which stamp duty and SDRT will not be charged.

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