

EXPLANATORY MEMORANDUM TO
THE STAMP DUTY AND STAMP DUTY RESERVE TAX (INVESTMENT
EXCHANGES AND CLEARING HOUSES) REGULATIONS [NO 9] 2009
2009 NO. 1828

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.
- 2.1 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 exercise of an option or contract for difference that was arranged or traded on the recognised investment exchange known as LIFFE (operated by LIFFE Administration and Management), shares in UK companies are transferred, between clearing members of LIFFE, by non-clearing members (or their nominees) to clearing members, and to or from LIFFE itself. The aim is to exempt LIFFE from Stamp Duty and SDRT and to facilitate it operating as a central counterparty in its own right.
- 2.2 An exception to this is where one party to the transaction is in default and in these circumstances LCH.Clearnet Ltd will provide clearing and settlement services. LCH.Clearnet Ltd, prior to this Statutory Instrument, provided all clearing and settlement service required by LIFFE.

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

- 3.1 None.

4. Legislative Context

- 4.1 There is already a SI covering LIFFE's activities (SI 1997/2429) and using LCH.Clearnet Ltd (at that time called The London Clearing House Ltd) as the central counterparty for almost all of the trades.
- 4.2 When shares in UK companies are transferred as a result of the exercise of an option arranged or traded through the LIFFE recognised investment exchange, the use of a recognised clearing house will no longer be required as LIFFE itself will clear and settle these transactions. An exception to this will be where one party is in default and in these circumstances LCH.Clearnet Ltd will continue to provide clearing and settlement services.

4.3 The shares so traded, and the relevant options and derivatives, will involve a number of transfers of those shares each of which is potentially chargeable to Stamp Duty or SDRT.

4.4 These regulations will ensure that multiple charges to Stamp Duty or SDRT will not arise when shares are transferred between non-clearing members or when passing through LIFFE itself.

4.5 Regulations under these sections have been made previously, specifically: SI 1995/2051, SI 1997/2429 (to be revoked when this SI comes into force), SI 1999/3262, SI 2000/2995, SI 2001/255, SI 2004/3218, SI 2007/1097, SI 2008/52, SI 2008/164, SI 2008/1814, SI 2008/2777, SI 2008/3235, SI2009/35, SI 2009/194, SI 2009/397, SI 2009/1115 and, SI 2009/1344.

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 and 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 instrument removes multiple charges to stamp duty or SDRT from LIFFE when clearing and settling transactions involving UK securities that are transferred as a result of the exercise of an option arranged or traded through the LIFFE recognised investment exchange. The instrument also removes multiple charges to Stamp Duty or SDRT from LCH.Clearnet Ltd when clearing and settling transactions conducted on the LIFFE recognised investment exchange. The regulations will aid liquidity in the securities market.

7.3 Public interest is likely to be minimal. Interest in the financial industry will be greater and some specialist press coverage exists.

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

- **Consolidation**

7.5 The Instrument is to be read in conjunction with SI 1997/2429 (see 4.1 above). It does not amend that earlier Instrument but it will revoke it.

8. **Consultation Outcome**

8.1 No consultation has been undertaken in relation to this specific matter.

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. HMRC will monitor the practical application of the new regulations.

13. **Contact**

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