

2011 No. 666

STAMP DUTY

STAMP DUTY RESERVE TAX

The Stamp Duty and Stamp Duty Reserve Tax (Eurex Clearing AG) Regulations 2011

<i>Made</i> - - - -	<i>7th March 2011</i>
<i>Laid before the House of Commons</i>	<i>9th March 2011</i>
<i>Coming into force</i> - -	<i>1st April 2011</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 (Eurex Clearing AG) Regulations 2011 and come into force on 1st April 2011.

(2) These Regulations have effect—

- (a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 1st April 2011;
- (b) for the purposes of the charge to stamp duty reserve tax—
 - (i) in the case of agreements to transfer traded securities or options which are not conditional, in relation to agreements made on or after 1st April 2011;
 - (ii) in the case of agreements to transfer traded securities or options which are conditional, in relation to agreements where the condition is satisfied on or after 1st April 2011.

Interpretation

2. In these Regulations—

“clearing participant” means a member of Eurex who as such is permitted by the Rules of Eurex to clear facility transactions and/or over the counter transactions;

“client” means a person who gives instructions to a non-clearing firm for traded securities or options to be sold in a facility transaction or an over the counter transaction;

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

“facility” means a recognised investment exchange within the meaning of sections 116(4)(b) and 117(3) of the Finance Act 1991;

“facility transaction” means a transaction in traded securities or options that is made on or reported to a recognised investment exchange;

“Eurex” means Eurex Clearing AG(a);

“nominee” means, save in relation to a non-clearing firm or its client (regulation 4(3)(b) and (e)), a person whose business is or includes holding traded securities or options as a nominee for Eurex, or another prescribed recognised clearing house, acting in its capacity as a person providing clearing services in connection with an over the counter transaction or a facility transaction, or as a nominee for a clearing participant;

“non-clearing firm” means a person other than a clearing participant who has an agreement with a clearing participant to clear over the counter transactions or facility transactions or both;

“option” means an option to buy or sell traded securities;

“over the counter transaction” means a transaction in traded securities or options made other than on a recognised investment exchange”;

“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—

- (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 a recognised clearing house

3. For the purposes of sections 116 and 117 of the Finance Act 1991 Eurex 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 facility transaction or an over the counter transaction (excluding transactions that come within section 80C and 89AA of the Finance Act 1986(c)), conditions A, B and C are met.

(3) Condition A is that traded securities or options 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 Eurex or its nominee;
- (d) a person other than a clearing participant to Eurex or its nominee, as a result of a failure by a clearing participant to fulfil its obligations in respect of the transaction concerned to transfer traded securities or options to Eurex, or its nominee;

(a) Eurex Clearing AG is a prescribed recognised clearing house within the meaning of the Financial Services and Markets Act 2000.

(b) 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).

(c) Sections 80C and 89AA of the Finance Act 1986 (c. 41) relate to stock lending transactions.

- (e) a person other than a clearing participant to a clearing participant or its nominee as a result of a failure by a non-clearing firm or its client, or nominee of a non-clearing firm or its client or by another clearing participant or its nominee to fulfil its obligations in respect of the transaction concerned to transfer traded securities or options to that clearing participant or its nominee;
- (f) a prescribed recognised clearing house or its nominee to Eurex or its nominee; or
- (g) Eurex or its nominee to a clearing participant or its nominee.

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

(5) Condition C is that where traded securities or options which are the subject of the relevant agreement are received by a clearing participant, the agreement must be identified by the clearing participant as an agreement that has been made solely in relation to the clearing of those traded securities or options on behalf of a third party.

(6) In this regulation “matching agreement” means an agreement under which—

- (i) the traded securities or options agreed to be transferred are of the same kind as the traded securities or options agreed to be transferred under the relevant agreement; and
- (ii) the number and transfer price of the traded securities or options agreed to be transferred are in total identical to the number and transfer price of the traded securities or options agreed to be transferred under the relevant agreement.

Michael Fabricant
Brooks Newmark

7th March 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the corresponding regulations specified in the Schedule of Revocations to S.I. 2011 No. 665. They give relief from stamp duty and stamp duty reserve tax (“SDRT”) to certain transfers of, or agreements to transfer, traded securities or options made in the course of trading in those traded securities or options either on a facility or over the counter. The transfers and agreements eligible for relief are those involving Eurex Clearing AG (“Eurex”), and its nominees, (through whom transactions on the facility are cleared) or clearing participants of Eurex and its nominees.

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

Regulation 3 prescribes Eurex as recognised clearing house for the purpose of the relief.

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.

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£4.00