EXPLANATORY MEMORANDUM TO

THE STAMP DUTY AND STAMP DUTY RESERVE TAX (INVESTMENT EXCHANGES AND CLEARING HOUSES) REGULATIONS (No.15) 2009

2009 No. 2977

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 trades on the SmartPool (operated by SmartPool Trading Ltd) multilateral trading facility, shares in UK companies are transferred between clearing members of European Central Counterparty Ltd ("EuroCCP") and/or SIX X-CLEAR AG ("X-CLEAR"), by non-clearing members (or their nominees) to clearing members (or their nominees), and to or from EuroCCP and/or X-CLEAR themselves.

2.2 The SmartPool multilateral trading facility is prescribed by the regulations as a recognised investment exchange, and EuroCCP and X-CLEAR are similarly prescribed as recognised clearing houses. The regulations will apply to instruments executed to give effect to share transfers that take place on or after 4 December 2009, to electronic transfers that take place on or after 4 December 2009 and to conditional agreements where the condition is satisfied on or after that date.

2.3 The aim is to exempt EuroCCP and X-CLEAR from stamp duty and SDRT on transactions effected through the two entities acting as central counterparties.

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 investment exchanges and their members/nominees, and recognised clearing houses and their members/nominees.

4.2 The definition of a "recognised investment exchange" now includes regulated markets and multilateral trading facilities 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.

4.3 When shares in UK companies are traded on the SmartPool trading facility, 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.

4.4 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/or X-CLEAR or when passing through EuroCCP and/or X-CLEAR themselves.

4.5 Regulations under these sections have been made previously, specifically: SI 1995/2051, SI 1997/2429, 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, SI 2009/35, SI2009/194 SI 2009/397, SI 2009/1115, SI 2009/1344 and, SI 2009/1827.

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 trades conducted on the SmartPool multilateral trading facility with EuroCCP and X-CLEAR acting as recognised clearing houses. The regulations may aid liquidity in the securities market, SmartPool believes that, by providing a choice of central counterparty, it may foster competition and reduce transactional costs, and also provide their clients with a flexible choice of clearing house.

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 Currently, trades conducted on the SmartPool multilateral trading facility can only be cleared through EuroCCP. The necessary relief is provided through SI 2009/194. These new regulations will provide the same relief, with the additional inclusion of X-CLEAR and the interoperability between the two clearing houses, as in SI 2009/194 and therefore these previous regulations will be revoked.

8. Consultation Outcome

8.1 No consultation has been undertaken in relation to this specific matter, although all named parties have 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

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