STATUTORY INSTRUMENTS

2010 No. 1877

STAMP DUTY

STAMP DUTY RESERVE TAX

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 3) 2010

Made - - - -	*21st July 2010*
Laid before the House of Commons	*22nd July 2010*
Coming into force - -	*13th August 2010*

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 (Investment Exchanges and Clearing Houses) Regulations (No. 3) 2010 and come into force on 13th August 2010.

(2) These Regulations have effect—

(a) for the purposes of the charge to stamp duty, in relation to instruments executed on or after 13th August 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 13th August 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—

"BATS MTF" means a multilateral trading facility operated by BATS Trading Limited(**b**);

"clearing participant" means a member of—

(a) EMCF who as such is permitted by the Rules of EMCF,

(**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).

(**b**) BATS Trading 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).

(b) EuroCCP who as such is permitted by the Rules of EuroCCP,

(c) LCH.Clearnet who as such is permitted by the Rules of LCH.Clearnet, or

(d) X-CLEAR who as such is permitted by the Rules of X-CLEAR,

to clear transactions made on the BATS MTF for a traded security and who may or may not also be a participant on the BATS MTF;

"client" means a person who gives instructions to a non-clearing firm for traded securities to be sold on the BATS MTF;

"EMCF" means European Multilateral Clearing Facility N.V.(**a**);

"EuroCCP" means European Central Counterparty Limited;

"LCH.Clearnet" means LCH.Clearnet Limited;

"X-CLEAR" means SIX X-CLEAR AG;

"nominee" means a person whose business is or includes holding traded securities as a nominee for EMCF, EuroCCP, LCH.Clearnet or X-CLEAR acting in its capacity as a person providing clearing services in connection with a transaction made on the BATS MTF, or as a nominee for a clearing participant;

"non-clearing firm" means a participant on the BATS 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—

(e) the stocks and shares are registered in a register kept in the United Kingdom by or on behalf of the body corporate; or

(f) 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 recognised investment exchanges and recognised clearing houses

3. For the purposes of sections 116 and 117 of the Finance Act 1991—

(a) BATS Trading Limited is prescribed as a recognised investment exchange;

(b) EMCF is prescribed as a recognised clearing house;

(c) EuroCCP is prescribed as a recognised clearing house;

(d) LCH.Clearnet is prescribed as a recognised clearing house; and

(e) 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 BATS 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;

(**a**) EMCF, EuroCCP, LCH.Clearnet 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.

(**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) a clearing participant or its nominee to either EMCF, EuroCCP, LCH.Clearnet or X-CLEAR, or to their nominees;

(d) a person other than a clearing participant to either EMCF, EuroCCP, LCH.Clearnet 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 EMCF, EuroCCP, LCH.Clearnet or X-CLEAR, or to their nominees;

(e) either EMCF, EuroCCP, LCH.Clearnet or X-CLEAR, or their nominees, to a clearing participant or its nominee;

(f) EMCF or its nominee to either EuroCCP, LCH.Clearnet or X-CLEAR or to their nominees;

(g) EuroCCP or its nominee to either EMCF, LCH.Clearnet or X-CLEAR or to their nominees;

(h) LCH.Clearnet or its nominee to either EMCF, EuroCCP or X-CLEAR or to their nominees; or

(i) X-CLEAR or its nominee to either EMCF, EuroCCP or LCH.Clearnet or to their nominees.

(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 EMCF, EuroCCP, LCH.Clearnet 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.

Revocation of the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 6) 2009

5. The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 6) 2009(**a**) are revoked.

Jeremy Wright
Angela Watkinson
21st July 2010 Two of the Lords Commissioners of Her Majesty's Treasury

(**a**) S.I. 2009/1462.

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 BATS MTF, a multilateral trading facility operated by BATS Trading Limited. The transfers and agreements exempted are those involving European Multilateral Clearing Facility N.V. ("EMCF") and/or European Central Counterparty Limited ("EuroCCP") and/or LCH.Clearnet Limited ("LCH.Clearnet") and/or SIX X-CLEAR AG ("X-CLEAR"), and nominees of these clearing houses, (through whom transactions on the BATS MTF are cleared), or clearing participants in EMCF and/or EuroCCP and/or LCH.Clearnet and/or X-CLEAR and their nominees.

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

Regulation 3 prescribes BATS Trading Limited as a recognised investment exchange, and EMCF, EuroCCP, LCH.Clearnet 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.

Regulation 5 revokes the Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations (No. 6) 2009 which are replaced by these Regulations.

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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