

Explanatory Note

Clause Y: Stamp duty on certain transfers to depositaries or providers of clearance services

Summary

1. This clause provides that securities transferred to a depositary receipt issuer or clearance service (or their respective nominees) as a result of the exercise of an option will be charged the 1.5% higher rate of stamp duty based on either the amount or value of the consideration or, if higher, the value of the securities. The clause will have effect from 23 March 2016 and will apply to options which are entered into on or after 25 November 2015 and exercised on or after 23 March 2016. A related change is made in respect of stamp duty reserve tax (SDRT) by clause X [SDRT on certain transfers to depositaries or providers of clearance services].

Details of the clause

2. Subsection (1) provides that part 3 of the Finance Act (FA) 1986 (stamp duty) is amended.
3. Subsection (2)(a) inserts new sections 67(2)(a), 67(2)(b)(i) and 67(2)(b)(ii) which provide that where the new section 67(2A) applies, stamp duty shall be charged on the amount or value of the consideration paid or, if higher, the value of the securities.
4. Subsection (2)(b) provides that section 67(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a depositary receipt issuer or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.
5. Subsection (2)(c) amends the wording of section 67(3) of FA 1986 so that it refers to cases which are not transfers on sale. This is for drafting clarity rather than effecting a substantive change.
6. Subsection (3) makes a consequential amendment to section 69(4) of FA 1986 to ensure that the description of value provided in section 69(4) applies to section 67(2)(b)(ii).
7. Subsection (4)(a) inserts new sections 70(2)(a), 70(2)(b)(i) and 70(2)(b)(ii) of FA 1986 which provide that where the new section 70(2A) applies, stamp duty shall be charged on the amount or value of the consideration or, if higher, the value of the securities.
8. Subsection (4)(b) provides that section 70(2A) applies where the transfer of UK securities is pursuant to the exercise of an option and either a term of the option provides for the securities to be transferred to a clearance service or its nominee, or there has been a direction by or on behalf of the purchaser for the securities to be so transferred.
9. Subsection 4(c) amends the wording of section 70(3) of FA 1986 so that it refers to cases which

are not transfers on sale. This is for drafting clarity rather than effecting a substantive change.

10. Subsection (5) makes a consequential amendment to section 72(2) of FA 1986 to ensure that the description of value provided in section 72(2) of FA 1986 applies to section 70(2)(b)(ii).
11. Subsection (6) sets out the commencement provision. The changes to the legislation apply where an option is exercised on or after 23 March 2016, but only where the option was entered into on or after 25 November 2015.

Background note

12. Where shares in UK companies are transferred the transaction is subject to stamp tax. This is either stamp duty on paper documents or instruments or SDRT on electronic transfers. The rate is 0.5% in both cases. However, where shares are transferred to a clearance system or depositary receipt issuer (or their respective nominees), a higher rate of 1.5% is charged to reflect the fact that the shares can be transferred free of stamp tax whilst they are in the clearance system or are covered by the depositary receipt.
13. A depositary receipt is in effect a substitute for the share itself and is issued by a person whose business includes the issuing of receipts against the deposit of the actual shares concerned. A clearance service is a system for holding securities and which allows members of that clearance service to trade and settle by book entry those securities within that system.
14. The 1.5% charge can apply when shares are transferred to a clearance service or depositary receipt issuer as a result of the exercise of an option. However, HM Revenue and Customs (HMRC) has become aware of option arrangements where the agreed price for the shares (the 'strike price') is significantly lower than their market value. The seller receives a large part of their consideration in the form of a high premium for the option.
15. As a result, these arrangements reduce the stamp duty payable on the transaction. This legislation addresses these arrangements by applying the higher of the consideration or market value where the transfer results from exercise of an option and the shares are transferred to a clearance service or depositary receipt issuer (or their respective nominees).