

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 83 Schedule 37: Stamp Taxes in the Event of Insolvency

Summary

1. [Section 83](#) and [Schedule 37](#) provide relief from stamp duty and stamp duty reserve tax (SDRT) where, under a stock lending or sale and repurchase arrangement, securities are not returned to the originator because of the insolvency, on or after 1 September 2008, of one of the parties.

Details of the Section

2. Subsection (1) introduces amendments to Part 3 (stamp duty) and Part 4 (stamp duty reserve tax) of the Finance Act (FA) 1986.
3. Subsection (2) provides that the amendments made by the Schedule have effect where one of the parties to a stock lending or repurchase arrangement (repo) becomes insolvent on or after 1 September 2008.
2. Subsection (3) provides that this section and Schedule will cease to have effect if the provisions of sections 107 to 110 of FA 1990 repealing stamp duty and SDRT are brought into effect.

Details of the Schedule

Part 1

3. Paragraph 2 inserts a new section 80D into FA 1986.
4. Subsection (1) of new section 80D provides that the section applies where A and B have entered into an arrangement to which section 80C applies, the conditions in subsections (2A) and (3) of that section are fulfilled, stock is transferred to A or his nominee and the conditions in subsection 80D(2) are fulfilled.
5. New section 80D(2) sets out the conditions that must be fulfilled for the section to apply. These are that A and B are not connected persons, have entered into a stock lending arrangement or a repo, and it becomes apparent, after B has transferred the stock to A or his nominee, that the stock will not be returned to B or his nominee, because of the insolvency of A or B, and the solvent party acquires replacement stock within thirty days of the date on which the insolvency occurs.
6. New section 80D(3) provides that, where collateral is provided under the arrangement, stamp duty will not be chargeable on any instrument by means of which replacement stock is transferred to the solvent party or his nominee where the solvent party uses the collateral provided to make the acquisition or, where the amount of collateral is insufficient, the solvent party uses his own funds to make up the balance of the cost of the replacement purchase.

*These notes refer to the Finance Act 2009 (c.10)
which received Royal Assent on 21 July 2009*

7. New section 80D(6) restricts the application of subsections (3) and (4) to purchases of replacement stock up to the amount of stock that will not be transferred as a result of the insolvency.
8. New section 80D(8) provides that the stamp mentioned in subsection (7) may be a stamp of such kind as the Commissioners for Her Majesty's Revenue and Customs may prescribe.
9. New sections 80D(9) and (10) define what is meant, for the purposes of the section, by a person 'becoming insolvent', 'collateral' and replacement stock'.
10. Paragraph 3 of the Schedule amends section 88 (1C) of FA 1986 so that that section only applies where new section 80D does not.

Part 2

11. Paragraph 5 inserts a new section 89AB into FA 1986.
12. Subsection (1) of new section 89AB provides that the section applies where P and Q have entered into an arrangement to which section 89AA applies, the only reason that the conditions in subsections (2A) and (3) of that section are not fulfilled is because chargeable securities of the same kind and amount as those transferred to P or his nominee are not returned to Q or his nominee, and the conditions in subsection 89AB(2) are fulfilled.
13. The conditions in new section 89AB(2) are that P and Q are not connected persons, that, after Q has transferred securities under the arrangement, either P or Q becomes insolvent, and it becomes apparent that, as a result of the insolvency, the securities will not be returned to Q or his nominee in accordance with the arrangement.
14. New section 89AB(3) provides that SDRT charges under section 87 of FA 1986 will not apply to the transfer of securities to P or his nominee or Q or his nominee under the arrangement.
15. New section 89AB(4) provides that sub-sections (5) and (6) apply where the solvent party to the arrangement acquires replacement securities before the end of the period of 30 days beginning with the date on which the insolvency occurs.
16. New section 89AB(5) provides that, where collateral is provided under the arrangement, SDRT will not be chargeable on any agreement to transfer replacement securities to the solvent party or his nominee where the solvent party uses the collateral provided to make the acquisition, or where the amount of collateral is insufficient, the solvent party uses his own funds to make up the balance of the cost of the replacement securities.
17. New section 89AB(6) provides that, where no collateral is provided, SDRT will not be chargeable on any agreement to transfer replacement stock to the solvent party or his nominee.
18. New section 89AB(7) provides that subsections (5) and (6) apply where the replacement purchase is effected by more than one agreement or by agreements with more than one person..
19. New section 89AB(8) restricts the application of subsections (5) and (6) to purchases of replacement securities up to the amount of securities that will not be transferred as a result of the insolvency.
20. New sections 89AB(9) (10) define what is meant, for the purposes of the section, by a person 'becoming insolvent', 'collateral' and 'replacement securities'.

Background Note

21. A stock lending arrangement involves the transfer of securities from a lender to a borrower, under an agreement that provides for securities of the same kind and amount to be returned to the lender at a prescribed date. Although described as a “loan”, the transactions involve the transfer of full title to the securities.
22. A sale and repurchase arrangement or ‘repo’ involves the transfer of securities from a seller to a purchaser under an agreement that provides for the purchaser to sell back to the seller at a later date securities of the same kind and amount. Again, the transactions involve the transfer of full title to the securities.
23. Because of the essentially temporary nature of the changes of ownership of the securities, the stamp duty and SDRT legislation includes special rules that ignore the transfer from the lender/seller to the borrower/purchaser and the return of the equivalent securities in the opposite direction.
24. Where securities of the same kind and amount are not, however, returned to the lender/seller for whatever reason, an SDRT charge arises in the hands of the borrower/purchaser on the basis that the original transfer is then regarded as an outright sale.
25. But where the failure to return the securities results from the insolvency of the other party, the imposition of an SDRT charge on the original transfer will reduce funds available to the creditors of the insolvent entity and/or restrict the ability of the solvent entity to restore his original position.
26. This section and Schedule will prevent that charge arising by providing that in this particular circumstance the normal rules will not apply.
27. Where the solvent party to an arrangement does not have stock returned to him, he may wish to replace those stocks by means of a purchase in the market. But where this occurs, a further stamp duty or SDRT charge arises even though he is simply trying to put himself back in the same position as he would have been in had the arrangement not terminated.
28. This section and Schedule prevent that outcome, in cases of insolvency, by removing the SDRT charge from purchases of replacement securities of the same kind and amount as those originally transferred.
29. Where, under a stock lending arrangement, the borrower provides collateral in the form of other chargeable securities and the arrangement terminates owing to insolvency, the lender will be regarded as having purchased the collateral securities for consideration represented by the value of the original securities lent. This will produce another unexpected SDRT charge and this section and Schedule will also remove that charge. The lender will therefore be able to restore his position without the penalty of additional SDRT charges that arise through no fault of his own.
30. [Section 32](#) and Schedule 13 complement this section and Schedule, giving relief from tax on chargeable gains where securities borrowed under a stock loan arrangement are not returned to the lender in broadly similar circumstances.