
STOCK LENDING AND REPURCHASE ARRANGEMENTS: STAMP DUTY, STAMP DUTY RESERVE TAX AND TAX ON CHARGEABLE GAINS

Who is likely to be affected?

1. Market makers, securities dealers and financial institutions that enter into stock lending or sale and repurchase ('repo') arrangements.

General description of the measure

2. Legislation will be introduced in Finance Bill 2009 to provide relief from unexpected stamp duty and stamp duty reserve tax (SDRT) charges that would otherwise arise where a stock lending or repo arrangement terminates, so that stock is not returned to the originator under the terms of the arrangement owing to the entry into insolvency of one of the parties to the arrangement.
3. As announced by the 2008 Pre-Budget Report (see PBR Note 06), parallel provisions will also be introduced in Finance Bill 2009 disapplying the rule that treats the non-return of borrowed securities in these circumstances as a disposal by the lender for the purposes of capital gains tax and corporation tax on chargeable gains (see paragraphs 11 and 12 below).
4. The measure disapplies the stamp duty and SDRT rules that impose an SDRT charge on the borrower under a stock lending arrangement or purchaser under a repo where the arrangement terminates on the insolvency of the borrower or purchaser. Similarly, where, under a stock lending arrangement, it is the lender that becomes insolvent, the SDRT charge on the lender in respect of any collateral stock or securities provided by the borrower will also be removed.
5. In addition, where the lender/seller buys securities to replace those lost owing to the insolvency of the borrower/purchaser, the purchase will be relieved from stamp duty or SDRT. And where the borrower under a stock loan arrangement needs to replace lost collateral securities, any replacement purchase will not incur a stamp duty or SDRT charge.

Operative date

6. The reliefs in question will apply where the insolvency of the borrower or lender occurs on or after 1 September 2008.

Current law and proposed revisions

7. Under sections 80C and 89AA of the Finance Act (FA) 1986, transactions under arrangements for the lending and return, or sale and re-purchase, of securities are ignored for stamp duty/SDRT purposes, provided that the securities of the same kind and amount are returned to the lender or seller in accordance with the terms of the arrangement. Where securities of the same kind and amount are not, for whatever reason, returned to the lender/seller, an SDRT charge arises in respect of the original loan/sale.
8. In future, where the reason for the non-return of securities is that the borrower/purchaser has become insolvent, no SDRT will be chargeable upon the borrower/purchaser.
9. Similarly, where the borrower has provided collateral in the form of chargeable securities, and the lender becomes insolvent so that the collateral securities are not returned to the borrower, no SDRT charge will arise upon the lender who has effectively acquired the collateral securities.
10. Where the borrower does not, owing to the insolvency, return the borrowed stock to the lender, and the lender acquires replacement securities in the market, the normal stamp duty or SDRT charge will not apply. Similar reliefs will be available for purchases of replacement securities made by sellers under sale and repurchase arrangements and by borrowers under a stock loan arrangement that need to replace lost collateral securities in the event of the insolvency of the lender.

Chargeable Gains

11. As outlined in the 2008 Pre-Budget Report Note 06, where the borrower does not, owing to the insolvency, return the borrowed stock to the lender, and the lender uses the collateral provided by the borrower to acquire replacement securities in the market, the rule that provides for a disposal of the borrowed stock by the lender will not apply. The acquisition of replacement stock by the use of the collateral will be treated as though it were the return of the borrowed stock by the borrower. The effect will be to allow the normal stock lending rules to continue to apply so that no capital gains or losses will arise to the lender.
12. The 2008 Pre-Budget Report also announced that similar capital gains treatment for stock transferred under repo arrangements was under consideration. No such changes will be made in respect of repos.

Further advice

13. If you have any questions about the stamp duty/SDRT changes please contact Miles Harwood on 020 7147 2801 (email: miles.harwood@hmrc.gsi.gov.uk). For questions about the capital gains changes please contact Colin Weston on 020 7147 0127 (email: colin.weston1@hmrc.gsi.gov.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk